No. 75-1197

In the Supreme Court of the United States

OCTOBER TERM, 1975

Supreme Court, U. S.
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F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

HELEN DE CASTRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Constitutional and statutory provisions involved	2
Statement	2
The Question is substantial	5
Conclusion	10
Appendix A	1a
Appendix B	19a
Appendix C	21a
Appendix D	23a

CITATIONS

Cases:

Dandridge v. *Williams*, 397 U.S. 471	9
Flemming v. *Nestor*, 363 U.S. 603	6, 10
Jefferson v. *Hackney*, 406 U.S. 535	9
Richardson v. *Belcher*, 404 U.S. 78	6, 8
Weinberger v. *Salfi*, 422 U.S. 749	2, 6, 8, 9
Williamson v. *Lee Optical Co.*, 348 U.S. 483	9

Constitution and statutes:

U.S. Constitution, Fifth Amendment	2, 5
Social Security Act, Title II, 49 Stat. 622, as amended, 42 U.S.C. 401 *et seq.*:	
Sec. 202, 42 U.S.C. 402	1

Cases—Continued	Page
Sec. 202(b), 42 U.S.C. 402(b)	4, 7
Sec. 202(b)(1)(A), 42 U.S.C. 402 (b)(1)(A)	3
Sec. 202(b)(1)(B), 42 U.S.C. 402 (b)(1)(B)	3, 4
Sec. 202(b)(1)(C), 42 U.S.C. (Supp. IV) 402(b)(1)(C)	3
Sec. 202(b)(1)(D), 42 U.S.C. (Supp. IV) 402(b)(1)(D)	3
Sec. 205(g), 42 U.S.C. 405(g)	4
Sec. 216(b), 42 U.S.C. (Supp. IV) 416(b)	3
Sec. 216(d)(1), 42 U.S.C. 416(d)(1)	3
Social Security Amendments of 1965, Sec. 308, 79 Stat. 375	7
Social Security Amendments of 1972, Sec. 114, 86 Stat. 1348	8
53 Stat. 1365	6
64 Stat. 483	7
28 U.S.C. 2282	5
Miscellaneous:	
H.R. Rep. No. 728, 76th Cong., 1st Sess. 7 (1939)	6
H.R. Rep. No. 1300, 81st Cong., 1st Sess. (1949)	7
H.R. Rep. No. 213, 89th Cong., 1st Sess. 93 (1965)	7
S. Rep. No. 92-1230, 92d Cong., 2d Sess. (1972)	8

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OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 1a-18a) is reported at 403 F. Supp. 23.

JURISDICTION

The judgment of the three-judge district court, which declared a portion of 42 U.S.C. 402 unconstitutional, was entered on September 30, 1975 (App.

B, *infra*, p. 19a). A notice of appeal to this Court was filed on October 24, 1975 (App. C, *infra*, pp. 21a-22a). On December 12, 1975, the time for docketing this appeal was extended by Mr. Justice Rehnquist to January 22, 1976; on January 8, 1976, Mr. Justice Stevens further extended the time for docketing the appeal to and including February 21, 1976. The jurisdiction of this Court is conferred by 28 U.S.C. 1252. *Weinberger* v. *Salfi*, 422 U.S. 749, 763 n. 8.

QUESTION PRESENTED

Whether Congress is constitutionally required to make wife's insurance benefits available to the unremarried divorced wife of a retired or disabled wage-earner on the same basis as if she had remained married to the wage-earner.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be * * * deprived of * * * property, without due process of law * * *.

The relevant provisions of Title II of the Social Security Act, 49 Stat. 622, as amended, 42 U.S.C. 401 *et seq.*, are reproduced in App. D, *infra*, pp. 23a-25a.

STATEMENT

This case involves the constitutionality of the conditions placed upon the eligibility of a divorced wife

for wife's insurance benefits under the Social Security Act. Under Section 202(b)(1)(B) of the Act, 42 U.S.C. 402(b)(1)(B), the "wife"[1] or "divorced wife"[2] of an individual entitled to old-age or disability insurance benefits is eligible for wife's insurance benefits if, *inter alia*, such wife or divorced wife has "attained age 62 or (in the case of a wife) has in her care * * * a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual."[3]

On September 23, 1971, appellee applied for wife's insurance benefits on the basis of the Social Security account of her divorced husband, Albert de Castro, who had earlier become entitled to old-age insurance

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[1] The term "wife" is defined in Section 216(b), 42 U.S.C. (Supp. IV) 416(b), as "the wife of an individual, but only if she (1) is the mother of his son or daughter, [or] (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed * * *."

[2] Section 216(d)(1), 42 U.S.C. 416(d)(1), defines the term "divorced wife" as "a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective."

[3] The other conditions on eligibility for wife's insurance benefits are set forth in Section 202(b)(1)(A), (C), and (D). In particular, to be eligible, a divorced wife cannot have remarried, nor can either a wife or a divorced wife be entitled to old-age or disability insurance based on a primary insurance amount greater than half the primary insurance amount of the wage-earner on whose Social Security account the claim for wife's insurance is based. 42 U.S.C. 402(b)(1)(A), (Supp. IV) 402(b)(1)(C), and (D).

benefits. Appellee, who was 56, and Mr. de Castro had been divorced in February 1968 after more than twenty years of marriage. Appellee had their 22 year-old daughter in her care; the daughter, who was disabled, was entitled to child's insurance benefits on the basis of Mr. de Castro's Social Security account (App. A, *infra*, pp. 1a-2a; Administrative Record, pp. 110, 119).

The application was denied initially because appellee had not attained age 62. However, the initial determination was reversed after a hearing, and appellee was determined by an administrative law judge to be eligible for benefits. Thereafter, on its own motion, the Appeals Council reviewed and reversed the administrative law judge's decision. The Appeals Council concluded that claimant was not entitled to benefits since she had not attained age 62, and Section 202(b)(1)(B) does not allow the payment of benefits to a divorced wife under 62 years of age. The Appeals Council decision became the final decision of the Secretary of Health, Education, and Welfare (App. A, *infra*, p. 4a).

Appellee then commenced this suit under Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), seeking (1) a declaratory order that Section 202(b) unconstitutionally discriminates against divorced wives by precluding them from receiving wife's insurance benefits under any circumstances before they attain age 62, while allowing such benefits to be paid without regard to age to wives who have a qualified child in their care, and (2) injunctive relief against enforcement of the statute in a way that denied her wife's insurance benefits.

A three-judge district court was convened under 28 U.S.C. 2282. The court granted both declaratory and injunctive relief, holding that there was "no rational justification * * * for distinguishing between married wives and [similarly situated] divorced wives" (App. A, *infra*, p. 12a).

THE QUESTION IS SUBSTANTIAL

This appeal presents an important question concerning the extent of the legislative power to allocate insurance benefits under the Social Security Act. The court below held that the equal protection principles embodied in the Due Process Clause of the Fifth Amendment bar Congress from withholding wife's insurance benefits from a divorced wife who would have been eligible for such benefits if she had remained married to the wage-earner. In so holding, the court misapplied the Due Process Clause and refused to recognize that the challenged statutory classification has a rational basis. The question presented is important to the administration of the Act.[4] Plenary review by this Court is warranted in these circumstances.

Just last Term this Court reaffirmed the principle that an ordinary social security classification offends

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[4] The Department of Health, Education, and Welfare estimates that providing wife's insurance benefits to divorced wives under age 62 who have qualified children in their care would entail the payment of approximately $9,000,000 in additional benefits during 1976 alone.

the Constitution only if it is "'patently arbitrary * * *, utterly lacking in rational justification.'" *Weinberger* v. *Salfi*, 422 U.S. 749, 768, quoting from *Flemming* v. *Nestor*, 363 U.S. 603, 611; see also *Richardson* v. *Belcher*, 404 U.S. 78, 81. Tested by that standard, the wife's insurance benefit provision is constitutional.

The current statutory provisions governing payment of insurance benefits to wives and divorced wives are the product of a series of legislative decisions, each enlarging the class of beneficiaries, made since the Social Security Act was first enacted. None of these decisions was irrational; each represented an amply justified determination that the members of a particular group not theretofore entitled to benefits had a meritorious claim to benefits based upon their particular relationship to the insured wage-earner.

As originally adopted, the Social Security Act did not provide for the payment of monthly benefits to anyone but the fully insured individual. When dependents' benefits were added in 1939, they were granted only to members of the family unit—wives, children, widows, orphans and dependent parents—on the reasonable assumption that such relatives were most likely to be dependent on the wage-earner for their economic well-being. See H.R. Rep. No. 728, 76th Cong., 1st Sess. 7 (1939). Such benefits were provided, *inter alia*, to the widow of a deceased wage-earner with an entitled child in her care. 53 Stat. 1365. In 1950, benefits were extended to all

wives of retired or disabled wage-earners with entitled children in their care. 64 Stat. 483.

When the Social Security Act was reconsidered in 1965, Congress identified another class whose special needs warranted recognition—divorced wives over 62 years of age who had been married to the wage-earner for at least twenty years and remained dependent on him for their support. Section 308 of the Social Security Amendments of 1965, 79 Stat. 375. Congress recognized that it was "not uncommon for a marriage to end in divorce after many years, when the wife is too old to build up a substantial social security earnings record even if she can find a job." H.R. Rep. No. 213, 89th Cong., 1st Sess. 93 (1965). To remedy this specific situation, Congress amended Section 202(b) to allow those divorced women, most of whom would otherwise have been ineligible for any Social Security benefits, to receive wife's insurance benefits upon reaching retirement age.[5]

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[5] In 1950, divorced dependent wives of deceased wage-earners with entitled children in their care had been made eligible for mother's benefits on the same basis as the widows of such wage-earners (64 Stat. 483). Congress concluded that in these circumstances, the wage-earner's death deprives the woman of support as surely as if she had not been divorced, and that her special needs justified extending benefits to her. See H.R. Rep. No. 1300, 81st Cong., 1st Sess. 98 (1949). Since the retirement or disability of the wage-earner does not similarly affect the dependent divorced wife, because these events do not terminate the alimony or other support obligation, no similar provision has been made for divorced mothers during the wage-earner's lifetime. Congress could reasonably

No benefits were provided for divorced wives under age 62; Congress evidently concluded that the problems of younger divorced wives were not as severe. The conclusion is reasonable. Such persons have a better chance of obtaining work and thereby establishing eligibility for old-age benefits on their own, and they are more likely to remarry and have their economic needs taken care of by their new spouse.

Most recently, the 1972 Amendments to the Act eliminated the proof of dependency requirements for divorced wives. Section 114, 86 Stat. 1348. See also S. Rep. 92-1230, 92d Cong., 2d Sess. 142 (1972). Here, as in *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 784, "[t]he administrative difficulties of individual eligibility determinations are without doubt matters which Congress may consider when determining whether to rely on rules which sweep more broadly than the evils with which they seek to deal." [6]

Thus, each individual decision to extend Social Security benefits to a particular category of wife,

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determine that if adjustments in the degree of support for younger divorced wives, with or without children in their care, are to be made following the wage-earner's retirement or disability, such adjustments are the responsibility of the state court that granted the divorce and that federal payments to supplement that support are not appropriate. Cf. *Richardson* v. *Belcher*, 404 U.S. 78.

[6] Appellee, who has received no support from her husband since their divorce (App. A, *infra*, p. 1a), would thus in no event have been entitled to benefits before the 1972 Amendments became effective on January 1, 1973 (App. A, *infra*, p. 4a).

widow, or divorced wife has been entirely reasonable. The resulting statutory scheme accordingly is reasonable, whether or not any single comprehensive rationale explains all its provisions. Here, as in most social welfare programs, the lines drawn represent the "'rough accommodation'" required by "'[t]he problems of government.'" *Dandridge* v. *Williams*, 397 U.S. 471, 485.

This accommodation may, at any given time, fail to recognize a need that Congress later concludes is meritorious. But it is for Congress, not the courts, to remedy that situation. Congress has been sensitive to the needs of the wives and former wives of wage-earners; the history of the wife's and widow's benefits provisions is one of steadily expanding coverage. This Court has often recognized that Congress may deal with a problem "one step at a time", by selecting "one phase of one field and apply[ing] a remedy there, neglecting the others." *Jefferson* v. *Hackney*, 406 U.S. 535, 546; *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.[7]

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[7] The court below refused to follow *Williamson*, concluding that "[t]he difference between classifications involving regulation of businesses and those affecting human needs is obvious" (App. A, *infra*, p. 12a). That distinction is flatly contradictory to this Court's teaching in *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 774:

> If the Fifth and Fourteenth Amendments permit this latitude to legislative decisions regulating the private sector of the economy, they surely allow no less latitude in prescribing the conditions upon which funds shall be dispensed from the public treasury.

This step-by-step approach is particularly suited to a social security insurance system, since it allows flexibility in meeting the demands of ever changing social conditions without compromising the fiscal integrity of the system's funding. As this Court has recognized, the Social Security Act "was designed to function into the indefinite future, and its specific provisions rest on predictions as to expected economic conditions which must inevitably prove less than wholly accurate, and on judgments and preferences as to the proper allocation of the Nation's resources which evolving economic and social conditions will of necessity in some degree modify." *Flemming* v. *Nestor*, *supra*, 363 U.S. at 610.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

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FEBRUARY 1976.

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 74 C 1830

[filed Sept. 30, 1975, H. Stuart Cunningham, Clerk]

HELEN DE CASTRO, PLAINTIFF,

v.

CASPAR WEINBERGER, THE SECRETARY OF HEALTH, EDUCATION AND WELFARE, DEFENDANT.

Before TONE, Circuit Judge, and MAROVITZ and WILL, District Judges.

OPINION

WILL, District Judge. The plaintiff, Helen de Castro, brings this action under 42 U.S.C. 405(g) seeking review of a final decision of the Secretary of Health, Education and Welfare denying her application for benefits. Helen de Castro is currently 60 years of age. She and the wage earner, Albert de Castro, were married on September 9, 1946, and were divorced on February 8, 1968, after more than 21 years of marriage. The divorce decree provided for no alimony or support and plaintiff has received none from her former husband since the entry of the decree.

Two children, Rosemary de Castro and Catherine de Castro, were born of the marriage. Catherine,

24 years of age, is mentally retarded, has been mentally disabled since birth, and is acknowledged to be entitled to child's insurance benefits on an entitled wage earner's account. Plaintiff has continually cared for Catherine since December 5, 1966 when Albert de Castro left plaintiff and his family and returned to the Philippine Islands where he has since remained. For a time thereafter, plaintiff was able to work, securing assistance with Catherine from her mother. Since her mother's death she has had to forego work to care for Catherine. Albert de Castro became entitled to old age insurance benefits on September 2, 1971, effective March, 1971.

At the heart of plaintiff's complaint is a constitutional challenge directed against section 202 of the Social Security Act, 42 U.S.C. § 402, which provides for benefits to the wife of a qualified wage earner who has a disabled child within her care. By reason of the defendant's interpretation of that section as excluding otherwise qualified but divorced wives who have not attained the age of 62 years, plaintiff claims that she has been arbitrarily discriminated against in violation of the principles of equal protection embodied in the Fifth Amendment. See *Weinberger* v. *Wiesenfeld*, 420 U.S. 636, 643 (1975). Since plaintiff seeks both a declaration that section 402(b)(1)(B) is unconstitutional on its face and as applied to her, as well as injunctive relief enjoining the enforcement of the statute to deny her insurance benefits and ordering payments of benefits from the date of first entitlement, plaintiff has properly requested the

convening of a three-judge court pursuant to 28 U.S.C. §§ 2281, 2282. Because there are no issues of material fact surrounding the constitutional dispute, the parties have submitted to the three-judge court cross motions for summary judgment, which, for the reasons set forth hereinafter, will be granted in plaintiff's favor.

I.

Helen de Castro qualifies as a divorced wife under the Act which provides:

> § 416 * * *
>
> (d) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective.

Plaintiff has not remarried. Furthermore, because she has not reached the age of 62 years, she is not entitled to benefits in her own right.

Assuming that she qualified under § 402(b)(1), plaintiff filed an application for benefits on the account of Albert de Castro as the divorced wife of a wage earner having in her care a child entitled to benefits. Section 402(b)(1) provides in part:

> The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual.

* * *

shall (subject to subsection(s) of this section) be entitled to a wife's insurance benefit. . . .

Her application was initially denied. After a hearing before an Administrative Law Judge, however, it was determined that she was entitled to a wife's benefits effective January 1, 1973. Thereafter, the Appeals Council of the Social Security Administration on its own motion decided to review the decision of the Administrative Law Judge, and, on May 3, 1974, reversed his decision, concluding that section 402(b)(1)(B) did not extend to divorced wives under age 62 who were caring for a dependent child but only to married wives. Accordingly, plaintiff was denied benefits. She now seeks review of the Appeal Council's ruling.

Plaintiff's challenge to the statutory classification, which deprives a divorced wife [1] with dependent children of a wife's benefits, is framed in the alternative. She contends that freedom of personal choice in matters of marriage and family life, which includes the right to obtain a divorce, is a "fundamental" right protected under the Constitution, and that marital status should be considered as an inherently suspect classification. She argues that the Court should employ the more rigorous strict scrutiny test in determining whether the distinction found in 402(b)(1)(B) is constitutionally sound. In the event this standard for review is not found to be controlling, she argues that even under the more traditional "rational basis test" the classification must fail.

[1] We use the terms "divorced wife" and its plural "divorced wives" herein as defined in 28 U.S.C. 416 (d), i.e., a woman divorced from a covered wage earner but only if she had been married to him for at least 20 years immediately preceding the divorce. In the context of this case, we need not and do not reach the question of whether the 20 year marriage requirement is constitutionally valid.

Plaintiff's attempt to invoke the more exacting strict scrutiny test as the appropriate standard for review here is without merit. Relying on the Supreme Court's recognition of the right to marry as "one of the vital personal rights essential to the orderly pursuit of happiness" [2] and the Court's characterization as fundamental of certain natural incidents of marriage, the plaintiff argues that freedom to dissolve the bonds of matrimony should also be recognized as a fundamental personal right and accorded the same constitutional protection extended the right to marry.

While it is undeniable that divorce is becoming more commonplace, we do not agree with plaintiff that it is a right recognized by the Constitution as fundamental to the pursuit of happiness. On the contrary, as expressed by the court in *Sosna* v. *State*

[2] *Loving* v. *Virginia*, 388 U.S. 1, 12 (1967).

of Iowa, 360 F.Supp. 1182 (N.D. Iowa, 1973), affirmed by the United States Supreme Court, 419 U.S. 393, 95 S.Ct. 553 (1975):

> Unlike voting or welfare, the concept of divorce is not a constitutional right nor is it a basic necessity to survival. *Sosna*, *supra*, at 1184.

Nor do we find plaintiff's suggestion that marital status should be aligned with race, national origin and alienage as a "suspect" classification to be persuasive.[3] Marital status is not an immutable characteristic determined solely by the accident of birth nor are statutory distinctions based upon it inherently odious or invidious. Absent these necessary criteria, marital status is clearly distinguishable from recognized suspect classifications, and does not warrant close judicial scrutiny.[4]

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[3] The Supreme Court has not yet decided whether classifications on sex are to be viewed as inherently suspect and thus subject to close judicial scrutiny. See *White* v. *Fleming*, —— F.2d —— (7th Cir. 1975), Slip Op., pp. 6-7.

[4] The instant case is distinguishable from *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975) affirming 367 F.Supp. 981 (D. N.J. 1973) which decided that the gender-based classification found in 42 U.S.C. § 402(g) limiting benefits to widows and surviving divorced mothers who met conditions set out in the section while excluding widowers who met those conditions was constitutionally invalid. The Court noted that, since Social Security taxes were deducted from plaintiff's wife's salary during the years in which she worked, she both failed to receive the same protection for her family that a similarly situated male would have received and was deprived of a portion of her own earnings in order to provide benefits to others. The Court concluded that the Due Process Clause of the Fifth Amendment prohibited a sex-based classification which resulted in the employment efforts of women producing less protection for their families than the efforts of men.

At issue here is legislation in the area of social welfare. Recognizing the wide latitude afforded Congress in making statutory classifications affecting public health, safety and welfare, the courts have customarily applied the traditional rational basis test as the appropriate standard for review. So long as the statutory classification bears some rational relationship to a legitimate legislative purpose and is free from invidious discrimination, it has withstood equal protection and Fifth Amendment challenges. *Flemming* v. *Nestor*, 363 U.S. 603 (1960); *Richardson* v. *Belcher*, 404 U.S. 78 (1971); *Weinberger* v. *Salfi*, 95 S.Ct. 2457 (1975). The primary issue before the court then is whether the exclusion of divorced wives from § 402 benefits has a rational relationship to some legitimate governmental purpose and is not an invidious discrimination.

II.

The defendant has attempted to justify § 402(b)(1)(B)'s limited coverage on the following five grounds:

1. Section 402(b) was originally intended to afford more adequate protection to the family as a unit, and since divorce terminates the legal relationship between the wage earner and his former spouse,

the exclusion of divorced wives from these benefits is clearly explainable.

2. Allowing these benefits to divorced wives would potentially entitle them to greater benefits than married wives, since the domestic relations courts generally provide for support payments.

3. Social Security constitutes remedial welfare legislation and Congress need not attack every aspect of a problem. Here it chose to attack the more urgent need of married wives with dependent children.

4. The budgetary consequences of allowing payment to plaintiff and other qualified divorced wives could seriously affect the actuarial integrity of the Social Security trust fund.

5. The controversy is non-justiciable because the remedy sought by the plaintiff, which would expand the benefit class, encroaches upon grounds constitutionally reserved to Congress.

A.

The defendant's argument characterizing the preservation and integrity of the family unit as an acceptable rationale for excluding divorced wives fails to recognize the significant changes in the nature and extent of the Act's coverage and its present posture. When originally enacted in 1935, the Social Security Act provided benefits only to the covered wage earner. It is true that, in 1939, when benefits were first extended to other members of the wage earner's immediate family, the amendments to the Act were designed to "afford more adequate protection to the

family as a unit."[5] Monthly benefits were provided at that time for wives, children, widows, orphans and surviving dependent parents of covered workers. As early as 1950, however, Congress expanded the coverage to include surviving divorced wives who were mothers of children entitled to survivors' benefits. In 1965, recognizing that it is not uncommon for a marriage to end in divorce after many years at a time when the wife is too old to build up her own substantial social security earnings record even if she can find a job, Congress amended this section once more and provided for old age benefits to divorced wives who had been married to a wage earner for at least 20 years prior to divorce. Congress' expressed purpose for this legislation was to provide protection for women who have spent their lives in marriages which are dissolved when they are far along in years—especially housewives who have not been able to work and earn Social Security benefit protection of their own.

It is clear from the foregoing that, if Congress ever intended to use the Social Security laws to preserve the integrity of the family unit by excluding divorced wives of covered wage earners, the policy has long since been abandoned. To suggest that denying benefits to divorced wives whose marriages lasted for more than 20 years and who are caring for dependent children born of such marriages was in-

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[5] Note that "more adequate protection," not preservation and integrity of the family was the stated objective.

tended by Congress to aid in preserving family units is obvious nonsense.

B.

Defendant also argues that allowing benefits to divorced wives under 62 years of age pursuant to § 402(b)(1)(B) would potentially entitle them to greater benefits than married wives since the domestic relations courts normally provide for support payments. This argument is without merit, since a married wife's benefits under § 402(b)(1) would normally be augmented by the income of the husband, whether that income consists of allowable wages, benefits under the Social Security Act, or money from other sources. Child support payment decrees seek to remedy the lack of enjoyment by a divorced wife of this kind of financial support. The wife and divorced wife under § 402(b)(1)(B), consequently, are at least equal so far as financial support is concerned. If any disparity exists, it is against the divorced wife who may very often find herself with an inadequate child support allowance or incapable of enforcing the child support decree. The instant case, where the husband fled the jurisdiction of the divorce court, is a pointed example. Moreover, a married wife with a retired husband who can care for the dependent child, has a far better opportunity for employment and income than a divorced wife.

Defendant's second argument, therefore, fails to support a rational distinction between married and divorced wives under § 402(b)(1)(B).

C.

Defendant further contends that, since Congress is not required to attack every aspect of a problem, it was justified in addressing that which it deemed most urgent and of greater magnitude—the needs of the married wife. Citing *Williamson* v. *Lee Optical Company, Inc.*, 348 U.S. 483 (1955), defendant asserts that Congress could legally recognize the existence of need in both married and divorced wives with dependent children but provide benefits only to married wives and exclude divorced wives. We disagree.

First, as previously discussed, there is no rational basis for concluding that a married wife having a dependent child in her care has a greater economic need than a divorced wife caring for such a child. In many cases the reverse will be true. Second, *Williamson* v. *Lee Optical Co.*, *supra*, fails to support defendant's contention that different treatment of married and divorced wives under § 402(b)(1)(B) is justifiable. In that case, the Supreme Court held that an Oklahoma statute, which prohibited opticians from fitting without a prescription old glasses into new frames or supplying lens, whether new or duplicates of lost or broken lens, while exempting from this regulatory system sellers of ready-to-wear glasses, did not violate the Equal Protection Clause of the Fourteenth Amendment. The Court supported this holding as follows (p. 489):

> The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of differ-

> ent dimensions and proportions, requiring different remedies. Or so the legislature may think. . . . Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others. . . . The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. We cannot say that the point has been reached here. For all this record shows, the ready-to-wear branch of this business may not loom large in Oklahoma or may present problems of regulation distinct from the other branch.

The instant case is distinguishable from *Williamson*. The problem dealt with by the statute here is the needs of mothers qualifying for wife's benefits under the statute. Within this area of need, no rational justification exists for distinguishing between married wives and divorced wives who have similar needs and who otherwise qualify for benefits. The difference between classifications involving regulation of businesses and those affecting human needs is obvious.

In *Dandridge* v. *Williams*, 397 U.S. 471 (1970), the Supreme Court determined that Maryland's maximum grant regulation of assistance to families with dependent children passed muster under the Equal Protection Clause of the Fourteenth Amendment. In explicating the rational basis underlying the regulation, the Court said (p. 486):

> We need not explore all the reasons that the State advances in justification of the regulation. It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor. By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment. And by keying the maximum family AFDC grants to minimum wage a steadily employed head of a household receives, the State maintains some semblance of an equitable balance between families on welfare and those supported by an employed breadwinner. (footnote omitted)

Subsequent to the submission of this case, the Supreme Court decided *Weinberger* v. *Salfi*, *supra*, holding that the nine-month duration-of-relationship requirements of §§ 416(c)(5) and (e)(2) are not unconstitutional. The majority found that the avowed Congressional purpose of preventing the use of sham marriages to secure Social Security benefits constituted a rational basis for excluding a widow who was married to a deceased wage earner less than nine months unless she is the mother of his child; adopted a child of his under the age of 18 while married to him or he adopted a child of hers under the same circumstances; or, if during their marriage they adopted a child under the age of 18. The Court recognized that the requirement might exclude some

legitimate claimants and not exclude some sham arrangements, but concluded that "Congress could rationally choose to adopt such a course."

No similar Congressional purpose or rational objective is apparent with respect to the exclusion of wives divorced after more than 20 years of marriage who are caring for a dependent child; born of the marriage. Nor, as subsequently discussed herein, can it be urged here, as the Secretary did in *Salfi*, that Congress sought to assure that payments would be made only to risks actuarially covered by the insurance program.

As distinguished from the instant case, the cases cited by defendant and *Salfi* involved statutory classifications which bore a reasonable relation to the legitimate objectives of legislation. No such relationship exists in the statutory distinction here involved.

D.

Defendant argues that the actuarial integrity of the relevant trust fund would be seriously affected by an adverse ruling. No data to support this contention has been furnished to the Court other than an estimate that 1,000 divorced wives as defined in § 416(d) would receive benefits at an additional annual cost of approximately $1,000,000. The defendant simply asserts the bald conclusion that providing benefits to divorced wives caring for dependent children would require a reduction in benefit payments to married wives caring for such children. The effect on the Social Security Act trust fund if payments to

any group are increased or the group is expanded is far more complicated than that. Obviously, amounts are collected from eligible wage earners who are the parents of dependent children without regard to their marital status or the time of their divorce. Plaintiff's husband presumably contributed through all the years of their marriage. That they were divorced shortly before the time his wife would have become eligible for dependent child benefits had they remained married cannot seriously be urged to have been contemplated by Congress in making the distinction between married and divorced wives or in calculating the benefits.

While we recognize possible budgetary consequences of a ruling declaring the instant classification violative of the Equal Protection Clause, this does not warrant preserving the invidious discrimination here involved. The Supreme Court in *Shapiro* v. *Thompson*, 394 U.S. 618 (1968), rejected the proposition that fiscal considerations may support invidious class distinctions as follows (p. 633):

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits

> to new residents save money. The saving of welfare costs cannot justify an otherwise invidious classification. (footnote omitted)

Since no rational relationship exists between the statutory purpose of providing benefits for wives who care for children qualifying for a dependant child's benefits and the statutory distinction which permits only married wives under the age of 62 years to receive such benefits, the distinction created by the statute is clearly invidious.

E.

Defendant argues finally that, because a decision in favor of plaintiff in this case and possible similar judicial intervention in other cases which challenge the operation of the Social Security benefit system might result in an increase in the Social Security tax rate, the judiciary cannot grant effective relief without compelling the exercise of powers reserved to Congress under Article I, section 8 of the Constitution. The activation of such Congressional power by the judiciary is constitutionally impermissible, defendant continues, rendering non-justiciable any controversy involving such judicial interference.

Plaintiff answers this contention by urging that, while the initial policy decision identifying persons to be beneficiaries under the Social Security Act is a matter particularly appropriate for Congressional discretion, Congress may not make unconstitutional distinctions and classifications. Accordingly, once that discretion has been exercised, the determination of

whether the Congressional choices are permissible under the Constitution devolves upon the courts. We agree.

Most, if not all, decisions invalidating some aspect of social welfare legislation have a bearing upon monies to be paid from the federal treasury. See for example *Weinberger* v. *Wiesenfeld, supra; Richardson* v. *Belcher, supra; Dandridge* v. *Williams, supra.* Clearly, the determination of the constitutional validity of classifications adopted by Congress is within the province of the judiciary. *Jimenez* v. *Weinberger*, 417 U.S. 628 (1974). Judicial authority to make such determinations is not altered by their social or fiscal impact. The instant controversy is judicially cognizable. To hold otherwise would leave Congress free to legislate unconstitutional classifications with no avenue of redress if, as is frequently the case, a constitutionally valid classification will involve the expenditure of federal funds.

CONCLUSION

We hold that 42 U.S.C. § 402(b)(1)(B) invidiously discriminates against divorced wives as defined in § 416(d) of the Code in violation of the Fifth Amendment. Defendant is, accordingly, enjoined from applying the statute in a manner which would deny plaintiff the benefits to which she is entitled under the Social Security Act and to pay plaintiff benefits from the date of first entitlement and so long as she remains eligible pursuant to the standards set forth in this opinion.

/s/ Philip W. Tone, Judge
PHILIP W. TONE, Judge
United States Court of Appeals

/s/ Abraham L. Marovitz
ABRAHAM L. MAROVITZ, Judge
United States District Court

/s/ Hubert L. Will
HUBERT L. WILL, Judge
United States District Court

Dated: September 30, 1975

APPENDIX B

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Name of Presiding Judges, Honorable Philip W. Tone, Abraham L. Marovitz and Hubert L. Will

Cause No. 74 C 1830 Date Sept. 30, 1975

Title of Cause

Helen de Castro vs. Caspar Weinberger, Secretary of H.E. & W.

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

_____

_____

Representing

_____

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Pursuant to Court's opinion this day filed; Court holds that 42 U.S.C. Sec. 402(b)(1)(B) invidiously discriminates against divorced wives as

defined in Section 416(d) of the Code in violation of the Fifth Amendment. Defendant is, accordingly, enjoined from applying the statute in a manner which would deny plaintiff the benefits to which she is entitled under the Social Security Act and to pay plaintiff benefits from the date of first entitlement and so long as she remains eligible pursuant to the standards set forth in this opinion.

Reserve space below for notations by minute clerk

Judge Tone, U.S. Court of Appeals

Judge Marovitz, U.S. District Court

Judge Will, U.S. District Court

Wesoky—740654

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 74 C 1830

[received Oct. 24, 1975, Stuart Cunningham, Clerk, United States District Court]

HELEN DE CASTRO, PLAINTIFF,

v.

CASPAR WEINBERGER, THE SECRETARY OF HEALTH, EEUCATION & WELFARE, DEFENDANT.

NOTICE OF APPEAL

NOTICE HEREBY GIVEN this 22nd day of October, 1975, that the defendant hereby appeals to the Supreme Court of the United States from the judgment of this Court entered on the 30th day of September, 1975, in favor of plaintiff against said defendant, granting plaintiff's motion for summary judgment.

This appeal is taken pursuant to Title 28, United States Code, Sections 1252 and 1253.

MARTIN B. LOWERY, Deputy Chief
Civil Division
United States Attorney's Office
219 South Dearborn Street
Chicago, Illinois 60604
312/353-1998

Notice should be served upon:

Theodore R. Sherwin, Esq.
Marvin A. Brusman, Esq.
SHERWIN & SHERWIN
Suite 1610
7 South Dearborn Street
Chicago, Illinois 60603

APPENDIX D

Section 202(b)(1) of the Social Security Act, as amended, 42 U.S.C. (Supp. IV) 402(b)(1) provides:

> The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216 (d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—
>
> (A) has filed application for wife's insurance benefits,
>
> (B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,
>
> (C) in the case of a divorced wife, is not married, and
>
> (D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual, shall * * * be entitled to a wife's insurance benefit for each month beginning with the first month in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs—
>
> (E) she dies,
>
> (F) such individual dies,
>
> (G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been

married to such individual for a period of 20 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Section 216(b) of the Social Security Act, as amended, 42 U.S.C. (Supp. IV) 416(b) provides:

> The term "wife" means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) had attained age 18 and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would

> have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974.

Section 216(d) of the Social Security Act, as amended, 42 U.S.C. 416(d) provides:

> (1) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective.
>
> (2) The term "surviving divorced wife" means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 20 years immediately before the date the divorce became effective.
>
> (3) The term "surviving divorced mother" means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.
>
> (4) The terms "divorce" and "divorced" refer to a divorce *a vinculo matrimonii.*

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 200397 202

Supreme Court, U. S.
FILED
JUL 13 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1197

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

HELEN DE CASTRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT FILED FEBRUARY 20, 1976
PROBABLE JURISDICTION NOTED MAY 3, 1976

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75–1197

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

INDEX TO APPENDIX

	Page
Relevant Docket Entries	III
In the United States District Court for the Northern District of Illinois, Eastern District:	
Complaint	1
Answer	4
District Court order granting Plaintiff's Motion to Convene a Three Judge Court	6
Plaintiff's Motion for Summary Judgment	7
Defendant's Motion for Summary Judgment	8
Order of the Supreme Court noting probable jurisdiction	9
Appeal Council decision	9
Administrative Law Judge decision	13

In the United States District Court for the Northern District of Illinois, Eastern District—Continued

	Page
Application for Retirement Insurance Benefits, filed by Albert de Castro	34
Supplement to Claim of Person Outside the United States	38
Statement Regarding Disability	42
Application for Child's Insurance Benefits for Catherine de Castro, filed by Helen de Castro	44
Inquiry to Wage Earner (Albert de Castro)	48
Disability Determination	49
Determination of Award of Benefits to Albert de Castro, and to Helen de Castro on behalf of Catherine de Castro	50
Application for Wife's Insurance Benefits	51
Determination of Disallowance	55
Reconsideration Determination	57
Medical record of Catherine de Castro from Catholic Charities Guidance Center	59

United States District Court, Northern District of Illinois
Eastern Division

Civil Action No. 74 C 1830

HELEN DE CASTRO

v.

CASPAR WEINBERGER,* THE SECRETARY OF HEALTH, EDUCATION AND WELFARE

RELEVANT DOCKET ENTRIES

Date	Proceedings
1974	
July 1	Filed complaint and 4 copies.
Oct. 30	Filed defendant's Answer to the Complaint.
Nov. 8	Filed plaintiff's motion to convene three judge District Court and supporting memorandum.
Nov. 11	Enter order dated November 8, 1974: Plaintiff's motion to convene three judge district court and supporting memorandum taken under advisement, Government's answering memorandum to be filed by November 29, 1974 and plaintiff's reply memorandum to be filed within 1 week thereafter. Order cause set for December 16, 1974 at 10:00 a.m. for ruling on said motion. Will, J. Notices mailed 11-11-74.
Nov. 29	Filed defendant's memorandum in opposition to plaintiff's application for a three judge court.
Dec. 10	Filed Plaintiff's reply to defendant's memorandum in opposition to plaintiff's application for a Three-Judge-Court.
Dec. 17	Enter order dated December 16, 1974: Plaintiff's motion to convene a three judge Court granted. Order cross motions for summary judgment and memorandums in support to be filed by December 30, 1974, simultaneous answering memorandums to be filed by January 15, 1975. Will, J. Mailed notices 12/17/74.
Dec. 19	Filed designation of three judge court appointing Philip Tone, Abraham Marovitz and Hubert L. Will, Judges.

---

* F. David Mathews has succeeded Mr. Weinberger as Secretary of Health, Education and Welfare.

Date	Proceedings
1975	
Jan. 6	Filed plaintiff's motion for summary judgment.
Jan. 6	Filed plaintiff's memorandum of authorities in support of motion for summary judgment.
Jan. 8.	Filed defendant's motion for summary judgment.
Jan. 8.	Filed defendant's brief in support of his motion for summary judgment.
Sept. 30	Filed Opinion.
Oct. 2	Enter order dated September 30, 1975: Pursuant to Court's opinion this day filed; Court holds that 42 U.S.C. Section 402(b)(1)(B) invidiously discriminates against divorced wives as defined in Section 416(d) of the Code in violation of the Fifth Amendment. Defendant is, accordingly, enjoined from applying the statute in a manner which would deny plaintiff the benefits to which she is entitled under the Social Security Act and to pay plaintiff benefits from the date of first entitlement and so long as she remains eligible pursuant to the standards set forth in this opinion. Three Judge Court Tone, Marovitz & Will. Mailed notices 10/2/75.
Oct. 24	Filed defendant's notice of appeal. (No Fee.)
Oct. 24	Mailed copy of notice of appeal and copy of letter to Sherwin & Sherwin, 7 S. Dearborn St. #1610, Chicago, Ill.; mailed copy of docket entries and letter to U.S. Attorney.
1976	
May 10	Filed certified copy of the order of the Supreme Court of Washington, D.C. noting probable jurisdiction in this case.
May 21	Filed defendant's notice.
May 21	Filed defendant's motion for leave to transmit the original record to the Supreme Court in Washington.
June 2	Enter order dated May 21, 1975: Enter order, defendant's motion to transmit original record to Clerk of the United States Supreme Court is granted. Draft. Will, J. Mailed notices 6-2-76.

[Docketed, Judge Will, filed July 1, 3:58 PM; Clerk, District Court]

United States District Court, Northern District of Illinois
Eastern Division

No. 74 C 1830

HELEN DE CASTRO, PLAINTIFF

v.

CASPAR WEINBERGER, THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

Complaint for Judicial Review

HELEN de CASTRO, plaintiff, by SHERWIN & SHERWIN, her attorneys, complaining of the defendant, CASPAR WEINBERGER, the Secretary of Health, Education and Welfare, alleges that:

1. Plaintiff is a citizen of the United States, and a resident of the City of Chicago, Cook County, Illinois and of the Northern District of Illinois.

2. Plaintiff brings this action to review a final decision of the Secretary of Health, Education, and Welfare denying her application for wife's insurance benefits, pursuant to the provisions of Title 42, Section 405(g) of the United States Code.

3. Notice of said decision was mailed to plaintiff on or about May 3, 1974. A copy of said Notice and a copy of the Secretary's decision dated May 3, 1974, are attached hereto as exhibits A & B, respectively, and made a part of this Complaint.

4. On September 23, 1971, plaintiff filed an application for wife's insurance benefits on the account of ALBERT de

CASTRO, #335-09-5167, as a divorced wife of the wage earner. Her application was denied on or about April 7, 1972. Pursuant to plaintiff's request, her application for wife's insurance benefits was reconsidered, but the decision disallowing her claim was affirmed on August 25, 1972. Thereafter, plaintiff timely filed a request for a hearing before an Administrative Law Judge of the Bureau of Hearings and Appeals, which hearing was held on March 16, 1973. The Administrative Law Judge in a decision dated August 8, 1973, determined that plaintiff was entitled to wife's insurance benefits effective January 1, 1973, under and pursuant to Section 202(b)(1) of the Social Security Act [42 U.S.C. § 402(b)(1)]. On September 13, 1973, the Appeals Council, on its own motion, decided to review the August 8, 1973, decision of the Administrative Law Judge. Following the submission of a memorandum of authorities on plaintiff's behalf, the Appeals Council heard oral argument, and on May 3, 1974, issued its decision that the plaintiff was not entitled to wife's insurance benefits, reversing the decision of the Administrative Law Judge. (See exhibit B).

5. Plaintiff was born on February 18, 1915, and at the time of the filing of this Complaint, is 59 years of age. She was married to the wage earner, ALBERT de CASTRO, on September 9, 1946, and divorced from him on February 8, 1968, after more that 20 years of marriage immediately preceding the divorce. Two children were born of the marriage, namely ROSEMARY de CASTRO and CATHERINE de CASTRO. CATHERINE de CASTRO is mentally retarded, and has been mentally disabled since birth. She requires continuous custodial care and supervision, which has been provided by plaintiff with whom CATHERINE de CASTRO has always resided. On the basis of her existing disability, an application on CATHERINE de CASTRO'S behalf for child's insurance benefits was allowed December 6, 1971, effective in March, 1971.

6. Plaintiff is the divorced wife, as defined in Section 216(d)(1) of the Social Security Act, of the wage earner, ALBERT de CASTRO, who became entitled to old-age insurance benefits on or about September 2, 1971, with entitlement effective in March, 1971.

7. Plaintiff is not married, and is not entitled to old-age or disability insurance benefits.

8. At the time of the filing of plaintiff's application for wife's insurance benefits, and at all other pertinent times, plaintiff has had continuously in her care CATHERINE de CASTRO, child of the wage earner, ALBERT de CASTRO.

9. In denying plaintiff's application for wife's insurance benefits, the Appeals Council relied upon Section 202(b)(1)(B) of the Social Security Act [42 U.S.C. § 402(b)(1)(B)]. Under Section 202(b)(1)(B) a wife, not yet 62, who has a disabled child in her care is entitled to insurance benefits, whereas a divorced wife, not yet 62, is not entitled to benefits even though she has a disabled child in her care. The Appeals Council, in interpreting that Section, concluded that a divorced wife under age 62 is excluded from entitlement even though she has in her care a child entitled to child's insurance benefits. Section 202(b)(1)(B), on its face, and as applied by the Appeals Council, operates to arbitrarily discriminate against divorced wives, including plaintiff, in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

WHEREFORE, plaintiff prays as follows:

1. That this Court reverse the decision of the Secretary of Health, Education and Welfare denying plaintiff's application for wife's insurance benefits;

2. That this Court order and direct the defendant to pay plaintiff wife's insurance benefits to which she is entitled retroactive to January 1, 1973;

3. That this Court declare Section 202(b)(1)(B) of the Social Security Act unconstitutional insofar as it operates to arbitrarily discriminate against wives that are divorced, including plaintiff;

4. That this Court enjoin and restrain the defendant from enforcing Section 202(b)(1)(B) as interpreted by the Appeals Council, and

5. That this Court grant such other and further relief as iustice and equity require.

HELEN DE CASTRO, PLANTIFF,
BY MARVIN A. BRUSMAN, AND
THEODORE R. SHERWIN,
Her Attorneys.

[Docketed, filed, October 30, 1976 10:54 AM; Clerk, U.S. District Court]

United States District Court, Northern District of Illinois
Eastern Division

No. 74 C 1830

HELEN DE CASTRO, PLAINTIFF

v.

CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

Answer

Now comes defendant, Caspar W. Weinberger, Secretary of Health, Education, and Welfare, by his attorney, JAMES R. THOMPSON, United States Attorney for the Northern District of Illinois, and in answer to plaintiff's complaint, states as follows:

1) Defendant admits the allegations contained in paragraph 1 of the complaint.

2) Defendant admits the allegations contained in paragraph 2 of the complaint.

3) Defendant admits the allegations contained in paragraph 3 of the complaint.

4) Defendant admits the allegations contained in paragraph 4 of the complaint.

5) Defendant admits the allegations contained in paragraph 5 of the complaint.

6) Defendant admits the allegations contained in paragraph 6 of the complaint.

7) Defendant admits the allegations contained in paragraph 7 of the complaint.

8) Defendant admits the allegations contained in paragraph 8 of the complaint.

9) Defendant generally admits the allegations contained in paragraph 9 of plaintiff's complaint, but defendant specifically denies that Section 202(b)(1)(B) of the Social Security Act, on its face, and as applied by the Appeals counsel, operates to arbitrarily discriminate against divorced wives, including plaintiff, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

10) Answering further, defendant states that the findings of fact of the Secretary of Health, Education, and Welfare are supported by substantial evidence and are conclusive.

11) Answering further, defendant states that in accordance with the provisions of Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), defendant files herein, as part of the answer, a certified copy of the transcript of record, including the evidence upon which the findings and decision complained of are based.

WHEREFORE, defendant prays for judgment dismissing the complaint with costs and disbursements and for judgment in accordance with Section 205(g) of the Social Security Act (42 U.S.C. 405(g) affirming the decision complained of.

Respectfully submitted,

JAMES R. THOMPSON,
United States Attorney.

Sd. M.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Hubert L. Will

Cause No. 74 C 1830 Date Dec. 16, 1974

Title of Cause Helen de Castro v. Caspar Weinberger, etc.

Brief Statement of Motion 10 For ruling on plaintiff's motion to convene 3 Judge Court.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Plaintiff's motion to convene a 3 Judge Court granted.

Reserve space below for notations by minute clerk

Order cross motions for summary judgment and memos in support to be filed by Dec 30, 1974, simultaneous answering memos to be filed by Jan 15, 1975

Will, D

DEC 17 1974

16

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

[Docketed, Filed, Jan. 6, 1975; H. Stuart Cunningham at 3:15 o'clock 1975; Clerk.]

United States District Court, Northern District of Illinois
Eastern Division

No. 74 C 1830

HELEN DE CASTRO, PLAINTIFF

v.

CASPAR WEINBERGER, THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

Motion for Summary Judgment

HELEN de CASTRO, plaintiff, by SHERWIN & SHERWIN, her attorneyes, moves this Honorable Court for the entry of a summary judgment in her favor and against the defendant, CASPAR WEINBERGER, Secretary of Health, Education, and Welfare. In support thereof, she allegs that there is no genuine issue as to any material fact, and that she is entitled to a judgment against the defendant as a matter of law upon the undisputed facts established by the pleadings.

WHEREFORE, plaintiff prays for a summary judgment:

1. Reversing the defendant's denial of plaintiff's application for wife's insurance benefits;

2. Directing the defendant to pay plaintiff wife's insurance benefits to which she is entitled retroactive to January 1, 1973;

3. Declaring Section 402(b)(1)(B) of Title 42 of the United States Code (Section 202(b)(1)(B) of the Social Security Act) unconstitutional insofar as it operates to arbitrarily discriminate against wives that are divorced, including plaintiff;

4. Enjoining and restraining the defendant from enforcing Section 202(b)(1)(B) as interpreted by the Appeals Council, and

5. Granting such other and further relief as justice and equity require.

HELEN DE CASTRO, PLAINTIFF,
By: MARVIN A. BRUSMAN, AND
THEODORE R. SHERWIN,
Her Attorneys.

[Docketed, Filed, Jan. 8, 1975—H. Stuart Cunningham at ——o'clock——Clerk.]

United States District Court, Northern District of Illinois
Eastern Division

No. 74 C 1830

HELEN DE CASTRO, PLAINTIFF
v.
CASPAR WEINBERGER, THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

Defendant's Motion for Summary Judgment

Now comes defendant, Caspar Weinberger, the Secretary of Health, Education, and Welfare, by his attorney, JAMES R. THOMPSON, United States Attorney for the Northern District of Illinois, and moves this honorable Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for the entry of summary judgment in its favor, there being no disputed material facts in this cause.

Respectfully submitted,

JAMES R. THOMPSON,
United States Attorney.

[Docketed, Filed, May 10, 1976—H. Stuart Cunningham at ——o'clock——Clerk.]

Supreme Court of the United States

No. 75–1197

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT
v.
HELEN DE CASTRO

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

May 3, 1976.

A true copy MICHAEL RODAK, JR.

Test: Clerk of the Supreme Court of the United States, by Laurue P. Gill, Deputy.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
BUREAU OF HEARINGS AND APPEALS.

Decision of Appeals Council

In the case of Helen de Castro (Claimant); Albert de Castro (Wage Earner).

Claim for Divorced Wife's Insurance Benefits, 335–09–5167 (Social Security Number).

This case is before the Appeals Council on its own motion to review the decision issued by the administrative law judge on August 8, 1973. The claimant was notified of the Council's action and of her rights with respect thereto. On March 21,

1974, the claimant's attorney, Mr. Marvine A. Brusman, appeared before the Council to present oral argument on her behalf.

In his decision, the administrative law judge concluded that the claimant, the divorced wife of the wage earner, is entitled to wife's insurance benefits effective January 1973. This conclusion was based on his finding that she had a child in her care and met "all requirements for entitlement to wife's insurance benefits prescribed in section 202(b)(1) of the Social Security Act as effective on January 1, 1973."

The issue before the Appeals Council is whether section 202(b)(1)(B) of the Social Security Act provides for payment of wife's insurance benefits to a wage earner's divorced wife who is under age 62 and has in her care a child entitled to child's insurance benefits.

Section 202(b)(1) of the Social Security Act in effect prior to the 1972 Amendments provided, as pertinent here, that:

> "The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—
>
> * * * * *
>
> (B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,
>
> * * * * *
>
> (D) in the case of a divorced wife, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from such individual, or was receiving substantial contributions from such individual (pursuant to a written agreement) or there was in effect a court order for substantial contributions to the support from

> such individual * * * at the time he became entitled to old-age insurance benefits * * *
>
> * * * * *
>
> shall * * * be entitled to a wife's insurance benefit * * *"

Section 114(a) of the Social Security Amendments of 1972 eliminated the support requirement of section 202(b)(1)(D) as a condition of entitlement for divorced wives. The Amendment applies with respect to benefits payable for months after December 1972.

Section 216(d)(1) of the Act defines "divorced wife" as a "woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective."

The evidence establishes that the claimant and the wage earner were married over 20 years at the time of their divorce on February 8, 1968. The wage earner was awarded old-age insurance benefits effective with the month of March 1971, and the claimant was awarded child's insurance benefits in behalf of a child of her and the wage earner.

On September 23, 1971, the claimant filed application for wife's insurance benefits. She stated that she was born on February 18, 1915, that she had not remarried after her divorce from the wage earner, and that since their divorce she had not received contributions from him toward her support nor was there in effect a court order for her support.

The Appeals Council concurs with the administrative law judge that the support requirement of section 202(b)(1)(D) of the Act in effect prior to the 1972 Amendments was not met. Therefore, if entitlement is otherwise found, benefits would be payable to the claimant only as of January 1973 pursuant to section 114(a) of the Social Security Amendments of 1972.

Whether the claimant is entitled to benefits beginning January 1973 must be decided by application of that portion of section 202(b)(1)(B) of the Act which reads "has attained age 62 or (in the case of a wife) has in her care * * * a child entitled to a child's insurance benefit * * *"

In his decision, the administrative law judge stated, in effect, that the Division of International Operations of the Social Security Administration, in denying the claimant's application" * * * apparently took the position that the 'child in care' alternative for entitlement, when either a wife or divorced wife had not attained age 62, is available only to a wife. [This] position is literally tenable because of the words in parenthesis—'in the case of a wife' * * * Thus * * * the letter of the law * * *" was followed. The administrative law judge continued "* * * The only way in which * * * adherence to the letter of the law could be condoned would be a clear manifestation by Congress that it intended such a result."

Section 202(b)(1)(B) clearly and unequivocably excludes from entitlement a divorced wife under age 62 even though she "has in her care" a child entitled to child's insurance benefits. The parenthetical phrase—"in the case of a wife—" leaves no doubt that this statute does not include entitlement of a divorced wife under age 62 with a child in her care.

That Congress did not intend a contrary result is evidenced by the interpretation placed upon section 308(a) of H.R. 6675 (the bill which amended section 202(b)(i) of the Act) by both reporting committees (Report 213, 89th Congress, 1st Session, House of Representatives p. 211, and Report 404, Part I, 89th Congress, Senate, p. 232) which contain identical language as follows:

> "Section 308(a) of the bill [H.R. 6673] amends 202(b) (relative to the payment of wife's insurance benefits) of the Social Security Act to provide for the payment of wife's insurance benefits to a divorced wife who is not married * * * The amended section 202(b) also provides that a wife's benefit will not terminate if she has attained age 62 and is divorced after having been married for 20 years (benefits for a wife under age 62 with a child in her care would terminate if she was divorced, regardless of how long she had been married, *since benefits are not provided*

> *for a young divorced wife with a child in her care until after the former husband's death*)." [Emphasis supplied.]

Thus, the intent of Congress is clearly defined in both reports and there can be no doubt that section 202(b)(1)(B) does not include nor can it be interpreted to include a divorced wife under age 62, and the Appeals Council so finds.

The claimant's attorney argues that denying benefits to the claimant and those like her while granting benefits to other wives seriously prejudices her and is contrary to the equal protection guarantee implicit in the 5th Amendment due process clause of the Constitution. As a quasi-judicial federal administrative body, the Appeals Council has neither the power nor the authority to hold that a statute which it administers is unconstitutional. Such authority is vested in the courts alone.

The decision of the administrative law judge is reversed. It is the decision of the Appeals Council that the claimant is not entitled to wife's insurance benefits for which application was filed September 23, 1971.

APPEALS COUNCIL
JOHN T. ALLEN,
Member.
NORMAN S. KERNS,
Member.
JOSEPH E. DONEGHY,
Member.

Date: May 3, 1974.

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
BUREAU OF HEARINGS AND APPEALS.

Hearing Decision

In the case of Helen de Castro (Claimant); Albert de Castro (Wage Earner).

Claim for Divorced Wife's Insurance Benefits, 335–09–5167 (Social Security Number).

The claimant, Helen de Castro, having disagreed with the determination of the Bureau of Retirement and Survivors Insurance of the Social Security Administration that she is not entitled to wife's insurance benefits as a divorced wife, timely filed a request for hearing before an Administrative Law Judge. Pursuant to appropriate notice the requested hearing was held in Evanston, Illinois, on March 16, 1973. The claimant appeared, was advised of her right to representation, and elected to proceed in person. She was the only witness to testify. She was accompanied by Catherine de Castro, age 24, her daughter by the wage earner Albert de Castro, but the daughter did not testify because she is mentally retarded and unable to speak.

JURISDICTION AND PROCEDURAL HISTORY

The issues arose from the following proceedings before the Bureau. On May 6, 1971, the wage earner, Albert de Castro, filed an application for retirement insurance benefits under his account, No. 335–09–5167. He therein alleged that he was over the age of 62 years, that he had married Helen Kupinsky in 1937, that they had one child who might be eligible for benefits, and that he (the wage earner) resided in the Republic of the Philippines. In a supplement to his claim, filed concurrently therewith, the wage earner added that he had been born in the Philippines, had taken up residence in Cook County, Illinois, in February, 1928, had thereafter become a naturalized citizen of the United States, and had remained in this country until September, 1967, when he returned to his country of origin with no definite plan to re-enter the United States.

After the normal course of verification and investigation the wage earner's application for retirement insurance benefits was allowed on September 2, 1971, with entitlement effective in March, 1971, the month in which he attained age 62.

In the processing of the aforesaid application it was ascertained that the wage earner had a disabled child, Catherine, over the age of 18 years residing with her mother in Chicago. The mother then, on July 26, 1971, filed an application on the child's behalf for child's insurance benefits. This application and a concurrent statement regarding disability alleged that the child was born on April 10, 1949, and suffered from mental retardation, that she had resided with her mother during each of the last 13 months, and that the mother and the wage earner were divorced in 1968. The application for child's insurance benefits was allowed on December 6, 1971, with entitlement effective in March, 1971, the month in which the wage earner, Catherine's father, attained age 62. The allowance was based upon a disability determination dated September 18, 1971, to the effect that the child had an IQ of 30 and had been mentally disabled since birth. No dispute exists relating to the foregoing applications for retirement insurance benefits and child's insurance benefits.

The next step created the present controversy. An application for wife's insurance benefits was filed by Helen de Castro, herein referred to as the claimant, on September 23, 1971. She therein alleged that she was 56 years old, that she had two marriages to the wage earner, the second on September 9, 1946, that this marriage ended by divorce in Chicago in January of 1969, and that their disabled child, Catherine, lived with her for the last 13 months. This application was lost and another was filed on January 24, 1972, after which the first one was retrieved and is considered herein as the current and controverted application. In considering the merits of this application the Bureau had before it a record of a divorce between the claimant and the wage earner on January 19, 1965. The Bureau denied the application on April 7, 1972, because the required 20 years had not elapsed between the only valid marriage between the parties on September 9, 1946, and said date of divorce. An earlier marriage between the parties on October 19, 1937, was held

invalid and not considered with relation to the 20 year requirement.

The claimant thereupon made timely request on April 26, 1972, that the matter be reconsidered, asserting that the almost 9 years between the earlier invalid marriage and the valid one should be counted toward the required 20 years because during these 9 years the parties thought they were married. She explained that "I was first married in 1937. At that time I did not know my divorce from my first husband had not gone through. As soon as I found out Mr. de Castro and I remarried." Pursuant to the claimant's request the matter was reconsidered but the initial denial was affirmed on August 25, 1972. The ground for affirmance, however, was entirely different. Prior to the reconsideration determination a correct copy of the divorce decree was obtained and the date thereof was February 8, 1968. It followed, then, that the claimant had been married to the wage earner for the required 20 years and that the initial denial was erroneous in this regard. The reconsideration determination, held, however, that the claimant had not yet attained age 62; that the applicable statute, Section 202(b) of the Social Security Act, requires that a divorced wife must be at least 62 to receive wife's insurance benefits; that the 20 year duration of marriage requirement and any other requirement need not be considered; and that the application must be denied on age alone.

In her request for hearing the claimant said: "I was married over 20 years to Albert de Castro and have an entitled disabled child in my care." As will be seen below, this was a very succinct and accurate statement of the claimant's position in this case.

ISSUES AND APPLICABLE LAW

The general issue is whether the claimant is entitled to wife's insurance benefits as the divorced wife of a wage earner who became entitled to old-age insurance benefits. The statute controlling this issue is Section 202(b)(1) of the

Social Security Act. It was amended in 1972, effective with January, 1973, and now reads as follows in pertinent part:

"Wife's Insurance Benefits

"(b)(1) The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a wife's insurance benefit * * *."

Prior to the 1972 amendment this statute contained a subparagraph D, which was deleted thereby, and the ensuing subparagraphs were re-lettered. The 1972 amendment made no other change. The deleted paragraph read in pertinent part as follows:

"(D) in the case of a divorced wife, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from such individual, or was receiving substantial contributions from such individual (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support

from such individual * * * at the time he became entitled to old-age insurance benefits * * *."

The facts in this case demonstrate that the claimant divorced wife could not comply with the quoted sub-paragraph D. Consequently, if otherwise entitled, payment of benefits could be effective no earlier than January 1, 1973 when the deletion of sub-paragraph D became effective.

There is no dispute here that the claimant is a divorced wife as defined in Section 216(d)(1) of the Act, which reads and at all pertinent times read as follows:

"(d)(1) The term 'divorced wife' means a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective."

Further, there is no dispute here that the claimant's former husband is a wage earner entitled to old-age insurance benefits, as required by Section 202(b)(1) of the Act, and that the claimant duly filed her application (as required by subparagraph A), is not married (as required by subparagraph C), and is not entitled to old-age or disability insurance benefits (as required by sub-paragraph E of the former statute and D of the present statute).

The only specific issue in this case is whether the claimant comes within the purview of sub-paragraph B, which reads and at all pertinent times read as follows:

"(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,"

SUMMARY OF THE EVIDENCE

The claimant was born on February 18, 1915, and in 1933 married William Ceralde, by whom she had one child,

Angeline. An action was instituted to dissolve this marriage in 1937 and, believing that a final divorce decree had been entered therein, the claimant married Albert de Castro, the wage earner in this case. They had two children, Rosemary, who was born on October 30, 1943, and Catherine, who was born on April 10, 1949. Mr. de Castro legally adopted Angeline, the claimant's child by Ceralde, in 1938. Both Angeline and Rosemary were normal children and have been emancipated for some years. Their status has no bearing on this case.

Catherine, however, showed signs of mental retardation as she emerged from infancy. Professional evaluations were obtained which demonstrated the impairment. At age 14 her level of understanding was found to be that of a two or three year old child and it was determined that she would continuously require custodial care and intensive supervision. She attended the hearing in March, 1973, and it was apparent that the mental disablement continued, for she could not communicate at a meaningful level. Exhibit 19, a 1963 report, describes her condition succinctly and it has not changed since. On the basis of the undisputed medical evidence she was awarded child's insurance benefits and continues to receive same. She has always lived with her mother, the claimant herein, who had the assistance of Angela Krupinski, her mother, in taking care of the child while the claimant worked. However, when Mrs. Krupinski died the claimant had to give up her job and devote her time to the care of Catherine, which she ever since has done.

Returning now to the claimant's marital status, it appears that in 1946 she was informed that her 1937 marriage to de Castro, the wage earner, was invalid because her divorce from Ceralde had not become final at the time, though it did later. She and de Castro immediately effected a valid marriage, this on September 9, 1946. More than 20 years later, on December 5, 1966, Mr. de Castro deserted the family, and the claimant, in 1967, instituted an action for

divorce on this ground. The defendant husband was personally served with process in this action but did not appear, answer, or otherwise respond to same. He departed from the jurisdiction and returned to the Philippines, his place of birth, and has remained there since.

The action for divorce proceeded to decree after the defendant's aforesaid default. The decree, which was entered on February 8, 1968, awarded to the plaintiff, the claimant here, the care, custody, control and education of Catherine and directed that the defendant, the wage earner here, pay the sum of $35.00 a week as and for child support. The decree also entered a judgment against the defendant for $1,250.00 in arrears of child support payments, from which it is apparent that he had been directed to pay child support *pendente lite*. The question of alimony to the plaintiff was reserved. The defendant was also directed to pay the plaintiff's counsel fee, $150.00. The plaintiff-claimant has received no payment whatsoever from the defendant-wage earner under the aforesaid decretal paragraphs. On May 9, 1971, Mr. de Castro, at age 62, married Teresita C. Fernandez, age 34, a childless single person, in the Philippine Islands.

ANALYSIS OF THE ENTITLEMENT STATUTE

In delineating the issues herein (see Issues and Applicable Law, pages 3, 4, and 5) it was concluded that the claimant now meets all the requirements of Section 202(b)(1) except as set forth in sub-paragraph B. It was also concluded that through December 31, 1972, she did not meet the support requirement of sub-paragraph D, but as this has been deleted effective January 1, 1973, the decision will deal with her entitlement from and after that date, for her 1971 application speaks through date of this decision. This decision will proceed with said conclusions as premises, and the statutory analysis will deal only with Section 202(b)(1)(B) of the

Act, which at all pertinent times provided in pertinent part as follows:

> *"Wife's Insurance Benefits*
>
> (b)(1) The wife * * * and every divorced wife * * * of an individual entitled to old age * * * insurance benefits, if such wife or divorced wife * * *
>
> B. has attained age 62 or (in the case of a wife) *has in her care* (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the wages * * * of such individual, * * *
>
> shall * * * be entitled to a wife's insurance benefit * * *" [emphasis added]

Before proceeding further it should be noted that no controversy exists relating to the words "has in her care" given emphasis in the quoted provision. The facts here come squarely within Sections 404.342 through 404.345 of the Secretary's Regulations defining these words (C.F.R. 20, Chapter III).

In its reconsideration determination the Bureau referred to Section 202(b) of the Act and noted that "In the case of a divorced wife, she must be at least age 62 and not married". It then denied the claim because the claimant would not be 62 until 1977. No reference was made to the fact that the claimant had a child in her care. The Bureau apparently took the position that the "child in care" alternative for entitlement, when either a wife or divorced wife had not attained age 62, is available only to a wife. The Bureau's position is literally tenable because of the words in parenthesis—"in the case of a wife"—after the word "or" in the first line of sub-paragraph B. Thus the Bureau followed the letter of the law.

However, there is more to the law than the letter. As Paul said, "not of the letter, but of the spirit: for the letter

killeth, but the spirit giveth life" (II Corinthians 3:6). This precept is the keystone of this decision. It was expressed in another and more relevant way in a 1968 Social Security Ruling on a divorced wife's claim (though the issue was different from the one here) and the expression was this:

> "It is well settled that a statute need not be literally read when it is clear that the Congress intended something it omitted to express, especially where such literal interpretation would lead to a clearly unjust result." (S.S.R. 69–1, pages 3, 4).

Let us first consider the matter of "unjust result". Under the statute in question a wife, not yet 62, who has a disabled child in her care is entitled to benefits. Under the statute as interpreted by the Bureau, this divorced wife, not yet 62, who has a disabled child in her care is not entitled to benefits. Thus, a penalty or forfeiture is imposed upon the divorced wife without any malfeasance or misfeasance on her part. All she did, after her husband deserted her and their child, was to exercise her right under the laws of the State of Illinois, where they resided, and file for divorce. There were circumstances which impelled her exercise of this right. Her title to real estate had to be cleared, and this was done (see the modified decree, Exhibit 13). The care, custody and control of the disabled child had to be provided for, and this was done (see the decree, Exhibit 12, page 4). The obligation of the wage earner to support Catherine had to be defined, adjudicated, and enforced, and the first two of these were done (see the decree, Exhibit 12, pages 3, 4). The third, the enforcing, was made nugatory by the wage earner's flight from the jurisdiction. If the claimant had not instituted the action to achieve these legitimate, necessary objectives, and also to obtain release from her limbo as a deserted wife, she would be eligible for benefits. The denial of benefits consequent upon her exercise of a legal right shocks conscience.

In the language of the Social Security Ruling quoted above, the Bureau's literal interpretation led "to a clearly

unjust result". The only way in which the Bureau's adherence to the letter of the law could be condoned would be a clear manifestation by Congress that it intended such a result. To ascertain the intent of Congress, this Judge had resort to authoritative sources, three in number. The first was the Congressional Record, Volume 111, Parts 6, 11, 13, and 14, setting forth the Proceedings and Debates of the 89th Congress, First Session, in April and July of 1965, relating to H.R. 6675, a bill entitled "Social Security Amendments of 1965". This bill became Public Law 89–97 on July 30, 1965 and contained Section 308(b)(1)(B), the statute in controversy in the case at bar. The second source was the five volume set entitled "Social Security Amendments of 1965", a publication compiled by the Social Security Administration. The volumes contain committee reports, debates, statutory texts, department recommendations, analyses of various provisions, justifications, comparisons with existing law, actuarial cost estimates, and, in short, all material relevant to the legislation. The third source was the transcript of the "Hearings before the Committee on Finance United States Senate Eighty-Ninth Congress First Session on H.R. 6675". The results of this research herewith are set forth, with separate captions for each source.

THE CONGRESSIONAL RECORD

H.R. 6675 was debated extensively in both houses of Congress because it contained the Medicare bill and perforce proposed revolutionary changes in American life. The OASDI amendments were the subject of much less debate and Section 308(b)(1)(B), which became the statute in controversy here, was not debated at all. Congressman Mills submitted for the record a "Summary of Major Provisions of H.R. 6675" which contained the following statement:

> "The bill would authorize payments of wife's and widow's benefits to the divorced wife age 62 or over of a retired * * * worker if she had been married

> to the worker for at least 20 years before the date of the divorce and if her divorced husband was making (or was obligated by a court to make) a substantial contribution to her support when he became entitled to benefits * * * The bill would also provide that a wife's benefits would not terminate when the woman and her husband are divorced if the marriage has been in effect for 20 years." (page 7218, l.c.) [1]

While the material quoted above sets forth an age 62 requirement, more emphasis was placed on the 20 years of marriage requirement, designed to place a wife divorced after so long a marriage on equal footing with a current wife. The Summary made no mention of a wife or divorced wife with a disabled child in her care and thus does not speak to the issue relevant to the case at bar.

In subsequent remarks in the House relating the Section 308(b)(1)(B) of H.R. 6675 no mention of the age 62 requirement was made and emphasis was placed on the 20 year marriage requirement. For instance, Congressman Secrest stated: "It also provide that a wife's benefits will not terminate when a woman and her husband are divorced if the marriage has been in effect 20 years." (page 7245 l.c.)

Congresswoman Mink stated: "The bill also has several other liberalizing provisions, among them one allowing payment of a wife's or widow's benefits for certain divorced woman who had been married at least 20 years before the divorce." (page 7384 r.c.)

Congressman Horton described the statute as providing: "Coverage for divorced wives or widows if married to an eligible worker for at least 20 years." (page 7419 l.c.)

Congressman Roncalio submitted a "Summary Analysis of H.R. 6675" (pages 7426–7427) in which no mention whatsoever was made of wife's insurance benefits. Another "Summary Analysis of H.R. 6675" was submitted by Congressman

[1] l.c., m.c., and r.c., refer to the left, middle and right columns on each page of the Congressional Record.

Roybal (page 7441), and this made no mention of wife's insurance benefits.

From the foregoing excerpts, and there are none to the contrary, these conclusions are inescapable—that the House gave scant attention to Section 308(b)(1)(B), insofar as the age 62 requirement was concerned; that its main concern was to liberalize the statute and place a wife divorced after 20 years of marriage on a plane with a current wife; and that it did not consider in any way the situation of a divorced wife under age 62 with a child in her care.

Proceding to the course of H.R. 6675 in the Senate, the record conclusively demonstrates the same preoccupation with the 20 year marriage requirement and the ignoring of the age 62 requirement. On July 6, 1965, Senator Long submitted a document entitled "Principal Provisions of the Bill", set forth in Volume 111, Part II, at pages 15602–15608. This document contained this statement:

> "(g) *Wife's and widow's benefits for divorced women:* The committee's bill would authorize payments of wife's or widow's benefits to the divorced wife of a retired, deceased, or disabled worker it she had been married to the worker for at least 20 years before the date of the divorce and if her divorced husband was making (or was obligated by a court to make) a substantial contribution to her support when he became entitled to benefits, became disabled, or died. H.R. 6675 would also provide that a wife's benefits would not terminate when the woman and her husband are divorced if the marriage has been in effect 20 years." (page 15,606, m.c.)

No mention was made of a divorced wife with a child in her care. This quoted statement was repeated by Congressman Mills on July 27, 1965, in his detailed explanation of the legislation as reflected by the conference agreement of both houses of Congress (Volume 111, Part 14, page 18287). It is notable that on this occasion he omitted mention of the age 62 requirement which he had briefly mentioned when

the bill was introduced in the House almost four months before.

Earlier, when Senator Fong presented a "Description of Provisions" on July 8, 1965 (Volume 111, pages 15,879–15,883), he referred to the child's insurance benefits amendment in the following language:

> "* * * benefits are provided for a child disabled before age 22—present law says before age 18—should his parent die, become disabled, or retire under social security. *The mother of the child would also be eligible for benefits so long as she continued to have the child in her care.*" [Emphasis added]

This cogent evidence of intent was repeated in the final Senate debate on July 28, 1965, reported in Volume 111, Part 14. While the statement related to another statute, it is a kindred statute, and the statement significantly reveals the legislative concern for a woman with a child in her care and lack of cencern for her age, both of which directly pertain to the matter at issue here.

Social Security Amendments of 1965, Five Volumes, Compiled By the Social Security Administration

Volume 1 of these contains the reports of the House Committee on Ways and Means and the Senate Committee on Finance. The House Committee Report, in its Summary of Principal Provisions of the Bill, displays the same negative and positive aspects noted above relating to the subject statute as in the analysis of the Congressional Record. These are the lack of emphasis on the age 62 requirement, the emphasis on the 20 year marriage requirement, and the failure to consider the situation of a divorced wife under age 62 with a disabled child in her care. The Senate Committee Report, in its description of proposed benefit changes, presents similar aspects.

One could continue *ad infinitum* asserting that this one or that one of the various documents in these five volumes fails to demonstrate cognizance of the full import and scope of

Section 308(b)(1)(B), but this would serve no purpose. The salient factors apparent from the five volumes are as set forth in the preceding paragraph.

Volume 4 contains a section entitled "Actuarial Cost Estimates", 28 pages long, and no mention is made or listing given relating to the addition of divorced wives, even over age 62, to the scope of Section 308(b)(1)(B). This circumstance indicates that the amendment with which we are concerned in this case is of minor monetary consequence to the Fund.

One significant thing should be noted, however, as explanatory of the inclusion of the parenthetical phrase "in the case of a wife" in the first line of sub-paragraph B. This is the phrase, as already indicated, which led the Bureau to deny benefits to this divorced wife, under age 62, who has a child in her care, because the alternative requirement of such care, in its view, was available only to a current wife. The thing of significance, as revealed in the foregoing source materials, is that in the proposed legislation the caption directly above Section 308(b)(1)(B) was "Wife's and Widow's Benefits for Divorced Women". In the light of this caption a differentiation may have been attempted between the terms "wife" and "widow" in the statute directly under the caption. It is possible that the parenthetical phrase was inserted to achieve this differentiation and then inadvertently left in the statute when the caption was reduced to "Wife's Insurance Benefits". With the original caption the phrase, "in the case of a wife" would refer to both a current and a divorced wife, to distinguish these from a widow. This reasoning is speculative but has some cogency when the legislative purpose is considered, that is, the placing of legal wives and divorced wives (with 20 years of marriage) on an equal basis.

Senate Finance Committee Hearings

The transcript of these hearings has 1256 pages. These were scanned for references to Section 308(b). Only five

were found, and they were very brief. These will be described herewith.

The statute was set forth on page 64. On page 101 Secretary Celebrezze described it as providing benefits "for certain aged divorce women who were married for many years prior to being divorced". On page 832 the Executive Director of the National Retired Teachers Association discussed the situation of a divorced aged woman who receives benefits on her exhusband's account and then contemplates re-marriage but hesitates because her benefits would cease. He argued that they should continue in order that socially undesirable relationships be avoided. At page 1117 a representative of the Methodist Church suggested that a divorced wife or widow be eligible if the marriage last only 10, not 20 years. On page 1224 Senator Yarborough of Texas wrote the Committee that the support provision should be changed to cover a situation where state law did not allow alimony, as in Texas.

The foregoing are the only references. This authoritative source of Congressional intent thus convincingly demonstrates that the particular statute at issue herein, insofar as it covers a divorced wife with a child in her care, was never discussed at the hearings. The entire statute, Section 308(b), was "lost in the shuffle" of the great Medicare debate, and examination of the transcript establishes this beyond doubt. In short the Finance Committee never investigated the merits and never exercised an informed choice relating to the statute in question.

* * * * *

Another argument negating the Bureau's literal interpretation can be derived from comparing the pre-1965 statute with that as amended in 1965. The earlier statute read as follows:

> "(b)(1) The wife (as defined in section 216(b)) of an individual entitled to old age or disability benefits, if such wife
>
> (A) has filed application for wife's insurance benefits,

> (B) has attained age 62 or has in her care (individually or jointly with *her husband*) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of *her husband* * * * shall * * * be entitled to a wife's insurance benefit * * *" [emphasis added]

Then the 1965 amendment made the statute conjunctive—"The wife * * * and every divorced wife * * * if such wife or such divorced wife * * *". Then the 1965 amendment accomplished a significant change with relation to sub-paragraph B, which prescribes the alternative if the claimant has not attained age 62. The alternative, if she "has in her care (individually or jointly with * * *)" formerly continued with the words "her husband" within the parentheses. The amendment changed these to "such individual". The reason for this change is obvious, and it was to include the ex-husband. This perforce makes the "child in care" alternative avaliable also to the person with an ex-husband, that is, a divorced wife. This change from "her husband" to "such individual" appears again in the last words of sub-paragraph B, from which it must be concluded that the change was designed and not inadvertent.

The crux of the matter is that in the particular text of subparagraph B there may be a conflict between the phrase "in the case of a wife" and the words "such individual." If this be deemed a conflict an ambiguity must be predicated. Such an ambiguity can be eliminated if due consideration is given to the entire scheme of the statute, its remedial nature, and the intent of Congress, all as discussed elsewhere in this decision. These factors, in the opinion of this Judge, require that the possible language conflict be resolved by holding that the "child in care" alternative was intended to be available to a divorced wife under age 62.

* * * * *

Examination of another sub-section of Section 202 of the Act leads to another cogent argument against the statutory

interpretation made by the Bureau. Section 202(g)(1)(E) provides that the surviving divorced mother of a wage earner's disabled child in her care is entitled to a mother's insurance benefit, *regardless of her age*, if certain other requirements, not here germane, are met. This situation has prevailed since the 1958 amendments. Should the divorced wife in the case at bar, whose ex-husband happens to be alive, be in a position different from that of a divorced wife whose ex-husband died? Each has a disabled child in her care, with the financial obligations incident to such care. Should one be allowed and one be denied benefits, when all things are equal and similar except the accident of the ex-husband being alive or dead? To ask these questions is to answer them. Logic and justice, social and juridical, preclude such discrimination against the claimant herein. The Bureau's denial accomplishes such discrimination and violates the remedial design of the pertinent statutes.

Before concluding, one further point should be made. During the last year our highest tribunal has decided that illegitimate children should share child's insurance benefits equally with legitimate children of the wage earner, because to deny them this equality would be unconstitutionally discriminatory in violation of the due process clause of the Fifth Amendment. This clause prohibits the federal government from creating statutes which establish arbitrary discrimination having no rational basis in legitimate government purposes, particularly remedial social legislation. Prescinding from the circumlocution necessary to relate the reasoning of those cases to the case at bar, a single analogy will be drawn. The gravamen for placing illegitimate children on an equal basis with their legitimate siblings is the irrelevance of the father's marital state to the equal protection provided all persons by law. By the same token, the marital state of the divorced claimant in the case at bar, who needs equal protection because she has a disabled child in her care, should not make her any different from a wife who has a child in her care or from a surviving divorced

mother who has a child in her care. The common, salient factor which gives rise to the need for benefits is the care of the disabled child. The need exists regardless of the mother's age or marital state, or the father's survival, and should be satisfied for all persons in the class.

SUMMARY

It was not the intent of Congress in 1965 to deny wife's insurance benefits to a divorced wife, under age 62, with a wage earner's child in her care. Such case was not clearly presented to it and the matter was never debated. The main intent of Congress in enacting the 1965 OASDI amendments to Section 202 of the Act was to liberalize same by placing a divorced wife whose marriage had lasted 20 years in the same status as a wife who did not obtain a divorce. The entire Congressional Record of the subject legislation demonstrates that the 62 year age requirement alternative, having a child in care, was not limited to a wife but was available also to a divorced wife. Any other interpretation would ascribe to Congress an intent to effect unconstitutional discriminations. Any other interpretation would violate the statutory scheme insofar as same relates to wives, divorced wives, widows, and disabled children. Even the text of Section 202(b) (1) (B), other than the phrase in controversy, requires that the alternative (child in care) be available to a divorced wife under age 62 because it refers to the child of "such individual", meaning either a husband or ex-husband.

FINDINGS OF FACT

The documentary evidence and the oral testimony have been considered carefully and same are found generally to be credible and free from controversy, wherefore the following specific findings are made:

1. On May 6, 1971, Albert de Castro filed an application for retirement insurance benefits on his wage earner's account, 335–09–5167, and this application was allowed on September 2, 1971, effective with the month of March, 1971, since which he has been receiving such benefits.

2. On July 26, 1971, Helen de Castro, former wife divorced of the wage earner, filed on behalf of Catherine de Castro, their 22 year old mentally disabled daughter, an application for child's insurance benefits on the said wage earner's account, and this application was allowed on December 6, 1971, effective with the month of March, 1971, since which she has been receiving such benefits.

3. On September 23, 1971, Helen de Castro, the claimant herein, filed an application for wife's insurance benefits on the said wage earner's account on the ground that she was the divorced wife of the wage earner with their disabled 22 year old child in her care.

4. The claimant and the wage earner were married on September 9, 1946, and were divorced on February 8, 1968, after more than 20 years of marriage immediately preceding their divorce.

5. The claimant is 58 years old and since the wage earner deserted her on December 5, 1966, has had continuously in her care their mentally disabled child, Catherine.

6. Since entry of the divorce decree on February 8, 1968, the claimant received no support from the wage earner and the decree, which reserved the question of alimony, contained no order for the support of the claimant.

7. The claimant is not married.

8. The claimant is not entitled to old-age or disability insurance benefits.

Based upon the foregoing Findings of Fact, there are made the following:

Conclusions of Law b

1. The claimant is the divorced wife (as such term is defined in Section 216(d) of the Social Security Act) of the wage earner.

2. The claimant, at all pertinent times, has had Catherine de Castro, child of the wage earner, in her care as such term is defined in Sections 404.342 through 404.345 of Social Security Regulations No. 4.

3. The claimant meets all the requirements for entitlement to wife's insurance benefits prescribed in Section 202(b)(1) of the Social Security Act as effective on January 1, 1973.

Decision

It is hereby adjudicated that Helen de Castro, the claimant, who was married to Albert de Castro, the wage earner, for more than 20 years immediately preceding their divorce in 1968, who has not since remarried, and who at all pertinent times has had their mentally disabled child, Catherine, in her care, is entitled to wife's insurance benefits on the wage earner's account effective with January 1, 1973, under and pursuant to Section 202(b)(1) of the Social Security Act.

JOHN F. LOEHER,
Administrative Law Judge.

Date: August 8, 1973.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration

Form Approved.
Budget Bureau No. 72-R0123.

APPLICATION FOR RETIREMENT INSURANCE BENEFITS*

*Provided by Section 202(a) of the Social Security Act, as amended

If you are awarded monthly benefits based on this application, you will be automatically entitled at age 65 to hospital insurance protection. In addition, this application form may be used for enrollment in the Supplementary Medical Insurance Benefits Plan.

(Do not write in this space)

U.S.A
RECEIVED
MAY 06 1971
CONTACT REP
SSA FIELD
[illegible]

NOTICE—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a $1,000 fine or 1 year of imprisonment, or both.

I hereby apply for entitlement to all insurance benefits which may be payable to me under Title II and Part A of Title XVIII of the Social Security Act, as amended.

1 Enter Your Full Name: De Castro, Albert

(Check one) ☑ Male ☐ Female

Enter your Social Security Number: 335 09 5167

2 Enter your date of birth (*Show month, day, and year*): 3-28-09

Enter the name of the State or foreign country where you were born: Alamidas, Cal.

3 (a) Check (√) whether you are:

☐ MARRIED (*Whether living together or separated*) ☐ WIDOWED ☑ DIVORCED ☐ SINGLE

(*If you checked "MARRIED" or "WIDOWED," complete (b) and (c).*) (*If you checked "DIVORCED" or "SINGLE" go on to item 4.*)

(b) Enter your wife's maiden name or your husband's name	Date of birth (*If unknown, give age*)	Date of marriage	Your wife's or your husband's Social Security Number (*If none or unknown, so indicate*)
Vera Espinosa	—	1937	[illegible]

(c) If your husband or wife is deceased, enter the date of death here → Date of death

4 Your children (*including natural children, adopted children, and stepchildren*) may be eligible for benefits based on your earnings record, if they are, or have been during any of the past 12 months unmarried and:

- under age 18, or
- age 18 to 22 and attending school, or
- age 18 or over and under a disability (*which must have begun before age 18*)

How many children do you have who may be eligible for benefits? → Number of children (*If none, write "None"*): None

5 (a) Have you ever before filed an application with the Social Security Administration for MONTHLY benefits or for hospital or medical insurance?

☑ YES (*If "Yes," answer (b) and (c)*) ☐ NO (*If "No," go on to item 6*)

EXAMINE (4PP)

(b) Enter name of person on whose earnings record you filed other application(s)	(c) Enter Social Security Number of person named in (b) (*If unknown, so indicate*)
Albert de Castro	335 09 5167

Form SSA-1 (1-68) (OVER)

6 (a) Are you now or have you been for any period in the past 14 months unable to work because of a disabling condition?

☐ YES (*If "Yes," answer (b)*) ☑ NO (*If "No," go on to item 7*)

(b) Enter date on which your disabling condition began → Month, day, year

7 (a) Were you in the active military or naval service after September 7, 1939?

☐ YES (*If "Yes," answer (b) and (c)*) ☑ NO (*If "No," omit (b), (c), and (d) and go on to item 8*)

(b) Enter name of branch (Army, Navy, etc.), country served (if other than U.S.), and dates of service

(c) Have you received, or do you expect to receive, a benefit from any other Federal agency?

☐ YES (*If "Yes," answer (d)*) ☐ NO (*If "No," skip (d) and go on to item 8*)

(d) List all such agencies:

8 Have you or your spouse worked in the railroad industry any time on or after January 1, 1937?

☐ YES ☑ NO

9 • Enter below the names and addresses of all the persons, companies, or Government agencies for whom you worked during the last 12 months.
• If you worked in agricultural employment, give this information for this year and last year.
• If neither of the above applies, write "None" below and go on to item 11.

Name and address of employer (*If you had more than one employer, please list them in order beginning with your last (most recent) employer*)	Work began Month	Work began Year	Work ended (*If still working, show "Not Ended"*) Month	Work ended Year
None				

(Use "Remarks" space for information about any other employers.)

10 May we ask your employers for wage information needed to process your claim?

☑ YES ☐ NO

11 (a) Were you self-employed this year, last year, or the year before?

☐ YES (*If "Yes," answer (b)*) ☑ NO (*If "No," skip to item 12*)

(b) Check the year or years in which you were self-employed	In what kind of trade or business were you self-employed?	Were your net earnings from your trade or business $400 or more? (Check "Yes" or "No")
☐ This year		
☐ Last year		☐ YES ☐ NO
☐ Year before last		☐ YES ☐ NO

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Please read the following information before going on to items 12, 13, and 14.

Some or all of your benefits are not payable if, while under age 72, you work for more than the monthly limit in employment (as defined below) or perform substantial services in self-employment in any month, and have earnings in excess of the exempt amount (as defined below) for the taxable year.* This applies to all employment and self-employment, whether or not covered by the Social Security Act.

The *monthly limit* is $125 per month for months in a taxable year ending prior to 1968 and $140 per month for any taxable year ending after 1967. If the taxable year is a calendar year, the $140 amount is effective January 1968.

The *exempt amount* of total earnings which a beneficiary may have without deduction from benefits is $1,500 per year for a taxable year which ends before 1968. It is $1,680 per year for taxable years ending after 1967. If the taxable year is a calendar year, $1,680 is the exempt amount beginning 1968.

As an employee, you count the gross wages (not the take-home pay) you earn during the year, regardless of when the wages are paid to you. As a self-employed person, you count the net earnings from your business (after deducting allowable business expenses).

12 (a) How much were your total earnings last year? . . . . . $ None

If the total in (a) is over the exempt amount, answer (b). If less, omit (b) and (c) and go on to item 13.

(b) Did you earn more than the monthly limit in employment or perform substantial services in self-employment in each month of last year?

☐ YES (*If "Yes," omit (c)*) ☐ NO (*If "No," answer (c)*)

(c) Circle each month of *last year* in which you did not earn more than the monthly limit in employment *and* did not perform substantial services in self-employment.

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

13 (a) How much do you expect your total earnings to be this year? (Count all of your earnings beginning with the first of this year and all expected earnings through the end of this year.) . . . . . $ None

If the total in (a) is over the exempt amount, answer (b). If less, omit (b), (c), and item 14.

(b) Have you earned more than the monthly limit in employment or performed substantial services in self-employment in each of the months of this year including the present month?

☐ YES (*If "Yes," omit (c)*) ☐ NO (*If "No," answer (c)*)

(c) Circle each month of *this year* including the present month in which you did not earn more than the monthly limit in employment *and* did not perform substantial services in self-employment.

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

14 (a) Do you expect to earn more than the monthly limit in employment or perform substantial services in self-employment in each of the next 3 months?

☐ YES (*If "Yes," omit (b)*) ☐ NO (*If "No," answer (b)*)

(b) List each of the next 3 months in which you do not expect to earn more than the monthly limit in employment *and* do not expect to perform substantial services in self-employment. . . . . .

Answer item 15 if you are now in the last 3 months of your taxable year (Oct., Nov., and Dec. if your taxable year is a calendar year).

15 How much do you expect your total earnings to be next year? . . . . . $ None

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which you earned more than the exempt amount, if you were under age 72 at least 1 full month of that year and received some benefit payment for such a month. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS.

16 Do you agree to file the annual report of earnings when required? ☒ YES ☐ NO

17 This application for retirement benefits may be retroactive for as many as 12 months from the date it is filed but not for any month before you reached age 62. *If you are between age 62 and age 65, your* application may be for benefits payable at a reduced rate. They will continue at a reduced rate even after you reach age 65.

If there are any months before you reach age 65 for which you do not wish to claim benefits, enter the months and give your reason .....

The yearly period referred to in this and following items is the usual 12-month period you use in figuring your income tax. If you use a fiscal year, that is, a taxable year that does not end December 31 (with income tax return due April 15), enter the month your fiscal year ends.

(OVER)

Answer item 18 only if you are a married woman.

18 Is your husband receiving at least one-half of his support from you? ☐ YES ☐ NO

Answer item 19 only if you are married and your husband or wife is applying for benefits.

19 (a) Check (✓) whether your marriage was performed by:

Clergyman or authorized public official ☐ or Other ☐ ..... (Explain)

(b) Were you married before your present marriage? ☐ YES ☐ NO

(*If "Yes," give the following information about each of your previous marriages.*)

Previous marriage	To whom married	When (*Mo., day, and year*)	Where (*Enter name of city and State*)
	How marriage ended	When (*Mo., day, and year*)	Where (*Enter name of city and State*)
Previous marriage	To whom married	When (*Mo., day, and year*)	Where (*Enter name of city and State*)
	How marriage ended	When (*Mo., day, and year*)	Where (*Enter name of city and State*)

(*Use "Remarks" space for information about any other marriage*)

Remarks: Name Filomena de Castro

Mother's maiden name [illegible]

Knowing that anyone making a false statement or misrepresentation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

SIGNATURE OF WITNESSES	SIGNATURE OF APPLICANT
If this application (and, if relevant, the enrollment section below) has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.	Signature (*First name, middle initial, last name*) (*Write in ink.*)
1. Signature	Sign Here ▶ Robert de Castro
Address (*Number and street, City, State and ZIP Code*)	Mailing Address (*Number and street, Apt. No., P.O. box, or Rural Route*) [illegible]
2. Signature	City and State [illegible] ZIP Code C 363
Address (*Number and street, City, State and ZIP Code*)	Date (*Mo., day and year*) NOV 6 8 AM Telephone number
	Enter name of county (*if any*) in which you now live [illegible]

Answer the question below only if you are now ABE 65 or older, or you will reach age 65 in this state by the end of the next 3 months.

ENROLLMENT IN THE SUPPLEMENTARY MEDICAL INSURANCE BENEFITS PLAN

Your social security district office will be glad to explain this plan and to give you a leaflet containing information on the physicians' and surgeons' services and other medical services covered, premium amounts, enrollment periods, etc. A request for enrollment cannot be effective unless it is made within one of the enrollment periods specified in the law. If you do not enroll within your initial enrollment period, you may have to pay a higher premium and your coverage will be delayed.

Do you wish to enroll in the supplementary medical insurance benefits plan? (Premium payments will be due. Where possible, these payments will be deducted from your monthly benefit check.)

☐ YES ☐ NO ☐ Undecided ☐ Currently enrolled

Sign below regarding medical insurance benefits plan.

Sign Here ▶ [redacted]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
Budget Bureau No.--R0506

SUPPLEMENT TO CLAIM OF PERSON OUTSIDE THE UNITED STATES

(To be completed by or on behalf of person who is, was, or will be outside the U.S.)

For social security purposes a person is outside the United States if he is physically outside the 50 States, the District of Columbia, Puerto Rico, Virgin Islands, Guam, and American Samoa.

1.	NAME OF WORKER ON WHOSE EARNINGS THIS CLAIM IS BASED ~~De~~ (P.S.) Tec. Albert	WORKER'S SOCIAL SECURITY NUMBER 335-69-5167
2.	PRINT YOUR NAME *(If you are filing application on behalf of an incompetent adult, enter his or her name in this space and answer all subsequent questions on this questionnaire FOR him.)* ~~Self~~	YOUR U.S. SOCIAL SECURITY NUMBER —

INFORMATION ABOUT THE WORKER NAMED IN ITEM 1 *(If you are the worker, give the information about yourself.)*

3. (a) Did the worker live in the U.S. for at least 10 years (i.e., make his temporary or permanent home in the U.S.)? ☑ Yes ☐ No
If "Yes," give the following information about all places where the worker lived in the U.S.

ADDRESS IN U.S. AT WHICH WORKER LIVED	DATE WORKER'S RESIDENCE BEGAN		DATE WORKER'S RESIDENCE ENDED	
	MONTH	YEAR	MONTH	YEAR
Guam City, Gee.	Feb	1938	Sep.	1967

(If additional space is needed, use REMARKS SECTION on last page.)

(b) If the worker named in Item 1 is now deceased, did he die while in the military service of the U.S. or as a result of disease or injury incurred or aggravated in the military service of the U.S.? ☐ Yes ☐ No
If "Yes," explain.

(c) Name the country of which the worker is a citizen. *(If deceased, name the country of which he was a citizen at time of death.)* →	NAME OF COUNTRY OR COUNTRIES U. S.

INFORMATION ABOUT THE CLAIMANT NAMED IN ITEM 2
(If you are filing on behalf of an incompetent adult, answer all subsequent questions for him. If you are the claimant, give the information about yourself.)

CITIZENSHIP

4. (a) At the time of your birth, of what country (or countries) were you a citizen? — NAME OF COUNTRY (or countries): Philippines

(b) Have you ever become a citizen of any country other than the country or countries shown in (a) above? ☑ Yes ☐ No
If "Yes," give the name of the country and explain how and when citizenship was acquired.
U. S. naturalized. EXHIBIT 2 (4 pp)

(c) Of what country (or countries) do you now claim citizenship? → NAME OF COUNTRY (or countries): U.S.

(d) Do you have a valid passport? ☑ Yes ☐ No
If "Yes," give the following information:

DATE ISSUED	PASSPORT NUMBER	NAME OF GOVERNMENT THAT ISSUED PASSPORT
	—	U. S.

IF YOU ARE A U.S. CITIZEN, answer (e) and (f) below. If You are not a U.S. citizen, go on to question 5.

(e) After becoming a U.S. citizen, have you ever been employed by a foreign government either in a civilian or military capacity? ☐ Yes ☑ No
If "Yes," explain when and where.

FORM SSA-21 (10-69) (Over)

4. (f) After becoming a U.S. citizen have you ever been convicted of any crime against the U.S.? ☐ Yes ☑ No
If "Yes," explain what crime(s), when, and where.

MILITARY SERVICE

5. Are you now serving on an active duty in the U.S. Armed forces? ☐ Yes ☑ No
If "Yes," show date you entered on active duty. → MONTH, DAY, YEAR:
If you are on active duty, omit question 6. Go on to question 7.

PHYSICAL PRESENCE IN THE U.S.

6. (a) Have you ever been physically present in the U.S. at any time? ☑ Yes ☐ No
If "Yes," answer (b) and (c) below. If "No," go on to question 7.

(b) Are you now physically present in the U.S.? ☐ Yes ☑ No
If "Yes," enter the date you plan to leave the U.S. → MONTH, DAY, YEAR:
If "No," enter date you left U.S. → MONTH, DAY, YEAR: Sep. 1967
Also enter date you plan to return. → MONTH, DAY, YEAR: Indef.

(c) Did you enter or leave the U.S. at any time during the past 24 months? ☐ Yes ☐ No
If "Yes," give the following information concerning each of your arrivals and departures.

DATE OF ARRIVAL (Month, day, year)	DATE OF DEPARTURE (Month, day, year)	ADDRESSES OF PLACES YOU LIVED OR VISITED IN THE U.S.

MAILING ADDRESS

All social security checks are sent to the beneficiary's place of residence unless there is a valid reason for sending checks in care of another person or to another address.

7. (a) Give the complete address of residence abroad. *(The place outside the U.S. where you now live or intend to live.)*
Guam Panglisinan.

(b) Show the address to which checks are to be sent.
do above

(c) If you cannot receive checks at the place where you live, please explain why.
do above

EMPLOYMENT – SELF-EMPLOYMENT

A person is employed if he performs services for someone else and receives cash payment or other compensation for these services. This includes any part-time work or summer work by a child, or work by a child as an apprentice.

A person is self-employed if he has a business either by himself or with one or more partners. Some examples of self-employment are raising fruit, crops or livestock for sale, taking in sewing or laundry, providing services as a tutor, lawyer, or physician, etc. The amount of earnings (or loss) has no effect on whether the person is considered self-employed.

8. (a) Have you been employed or have you engaged in self-employment outside the U.S. during any of the past 24 months including the present month? ☐ Yes ☑ No

(b) If you are still in the U.S. will you engage in employment or self-employment outside the U.S.? ☐ Yes ☑ No

Give the following information about your employment or self-employment outside the U.S.

NAME AND ADDRESS OF EMPLOYER (If self-employed, show "self" and address at which your trade or business was conducted)	TYPE OF BUSINESS	EMPLOYMENT OR SELF-EMPLOYMENT	
		DATE BEGAN OR WILL BEGIN	DATE ENDED (If not ended, leave blank)

CHANGES TO BE REPORTED PROMPTLY TO THE SOCIAL SECURITY ADMINISTRATION

Notify the Social Security Administration promptly if, while outside the U.S.:

(1) you become employed or self-employed while under age 72

(2) there is any change in your citizenship

(3) you go into a different country for more than 1 month.

9. (a) Do you agree to notify the Social Security Administration promptly when any of the above events occur? ☑ Yes ☐ No

FAILURE TO REPORT EMPLOYMENT OR SELF-EMPLOYMENT PROMPTLY AS AGREED MAY RESULT IN THE LOSS OF MONTHLY BENEFITS

(b) Do you also agree to return promptly any check for benefits received by you if you are not entitled to it? ☑ Yes ☐ No

BE SURE YOU SIGN THIS STATEMENT IN THE SIGNATURE BOX ON THE NEXT PAGE

An explanation of the special circumstances that affect payment of benefits to beneficiaries outside the U.S. is given in the booklet SSA-609, "Social Security Benefits Outside the United States," and on the following page.

(Over)

THE FOLLOWING CIRCUMSTANCES MAY AFFECT THE PAYMENT OF SOCIAL SECURITY BENEFITS TO APPLICANTS OUTSIDE THE U.S.

Your benefits are not payable for any month in which:

A. You (while under age 72) engage in noncovered remunerative activity outside the United States on 7 or more different calendar days during a month, OR

B. The worker (while under age 72) on whose account you are receiving benefits engages in noncovered remunerative activity outside the United States on 7 or more different calendar days during a month.

A person is engaged in noncovered remunerative activity on 7 or more different calendar days a month, regardless of the amount of earnings and the number of hours worked on any particular day, if:

(1) he is carrying on a trade or business outside the United States as sole owner or partner on 7 or more different calendar days a month, and his net earnings from self-employment are not subject to United States social security taxes, OR

(2) he is employed (this includes stand-by employment) to perform services as an employee on 7 or more different calendar days a month and his wages are not subject to United States social security taxes, OR

(3) any combination of (1) and (2).

II. If you are not a citizen or national of the United States, your benefits may not be payable for any month after you have been outside the United States for 6 consecutive calendar months. When your benefits are withheld for that reason, they cannot be resumed until you have been in the United States for a full calendar month.

(Aliens receiving benefits on the earnings record of a deported wage earner will not receive benefits if they are outside the United States any part of a month following his deportation.)

REMARKS: (You may use this space for any explanations. If you need more space, attach a separate sheet.)

USCA
REC. IV. D
MAY 06 1971
CONTACT REP
SSA FIELD
TRIP

I know that anyone who makes a false statement or representation of a material fact in application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law. I affirm that the above statements are true.

SIGNATURE OF WITNESSES	SIGNATURE OF PERSON COMPLETING THIS SUPPLEMENT
If this statement has been signed by mark (x), or fingerprint, two witnesses who know the signer must sign below, giving their full addresses.	SIGNATURE (First name, middle initial, last name) (Write in ink)
1. SIGNATURE	SIGN HERE ➧ Albert de Castro
ADDRESS OF WITNESS (Street number, city and country)	STREET ADDRESS Alaminos, Pangasinan
2. SIGNATURE	CITY, COUNTRY Philippines C-313
ADDRESS OF WITNESS (Street number, city and country)	DATE (Month, day, year) MAY 06 1971

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved.
Budget Bureau No. 72-R0577

STATEMENT REGARDING DISABILITY
(BY WIDOW, WIDOWER, SURVIVING DIVORCED WIFE, OR CHILD)

CHICAGO, ILLINOIS
JUL 29 1971
51499
SSA DISTRICT OFFICE
Filed

NOTICE— Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a $1,000 fine or 1 year of imprisonment, or both.

1. Enter name of wage earner or self-employed person	Enter His Social Security Number
Albert de Castro	335 09 5167

This statement is filed in connection with a claim for benefits by a disabled person, i.e., widow, widower or child age 18 or over. (If you are the disabled person, answer the questions on this form with respect to yourself.)

2. Enter Full Name of Disabled Person	Enter Date of birth of the disabled person (Show month, day and year)
Catherine de Castro	4/10/49

3. (a) Has the disabled person ever had a social security number of his own?
☐ Yes (If "Yes," complete (b).) ☒ No (If "No," go on to item 4.)

(b) Enter the disabled person's social security number here ——→ Social Security Number (If unknown, so indicate) ___-___-____

Answer Question 4 only if the disabled person is applying for widow's or widower's benefits.

4. (a) Was the disabled widow or widower previously entitled to monthly benefits on the account of the person named in item 1?
☐ Yes (If "Yes," complete (b).) ☒ No (If "No," go on to item 5)

(b) Enter date benefits ended (or will end) ——→ Month and Year

5. What is the disabled person's disability? (Briefly describe the injury or illness that has prevented the disabled person from working.)
Mental retardation EXHIBIT 3 (2 of 2)

6. Check the first block which applies to the disabled person.

(a) ☐ Confined in a medical institution other than a general hospital	(d) ☐ Confined in a chair (Including wheel chair)
	(e) ☐ None of the above but unable to go outside
(b) ☐ Patient in a general hospital	(f) ☒ Able to go outside but only with help of another person or wheelchair
(c) ☐ Confined in bed at home	(g) ☐ Able to go outside without help

7. Enter the date on which the disabling condition began. ——→ Date (Month, day, year) birth.

FORM SSA-17 (1-69) (OVER)

8. a. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review the disabled person's claim or continuing disability, any medical records or other information about the disabled person's disability? ☒ Yes ☐ No

The events listed below may affect the disabled person's entitlement to benefits. You will find a more complete explanation of what events apply to the disabled person, and how they affect benefits, in the "Rights and Responsibilities" booklet you will receive.

Report the following events:

(a) The disabled person's MEDICAL CONDITION IMPROVES so that he would be able to work, even though he has not yet started to work;

(b) The disabled person GOES TO WORK whether as an employee or a self-employed person;

If the disabled person is now hospitalized, —

(c) The disabled person is DISCHARGED FROM THE HOSPITAL.

9. Do you agree to notify the Social Security Administration promptly if any of the above events occur? ☒ Yes ☐ No

Remarks: (This space may be used for explaining any answers to the questions. If additional space is required, attach a separate sheet.)

IMPORTANT INFORMATION PLEASE READ CAREFULLY. — An applicant for widow's, widower's or child's insurance benefits as a disabled person is required to submit medical evidence showing the nature and extent of the disability during the time he (she) is alleged to be under a disability. If such evidence is not sufficient to arrive at a determination, the disabled person may be requested to have an independent medical examination at the expense of the Social Security Administration. Should the Social Security Administration obtain information useful to his physician for treatment, such information may be furnished to the physician upon his request and with consent of the source.

Knowing that anyone making a false statement or representation for use in determining a right to payment under the Social Security Act, commits a crime punishable under Federal law, I certify that the above statements are true.

If the statement has been signed by mark (X), two witnesses who know the person sign below and give their full addresses.

1. Name [illegible]
Address (Number and Street, City, State and ZIP Code) [illegible]

2. Name [illegible]
Address (Number and Street, City State and ZIP Code) [illegible]

Signature of Applicant (Write in ink)
Vera Nilda de Castro
Mailing Address (Number and Street, P.O. Box, or Route)
4545 N. Central Ave
City and State: Chicago Ill. Zip Code: 60625
Date (Month, Day and Year)
Telephone Number: 588-4462
Enter Name of County (if any) in Which You Now Live: Cook

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration

Form Approved.
Budget Bureau No. 72-R0126

(Do not write in this space)

CHICAGO, ILL.

SSA

APPLICATION FOR CHILD'S INSURANCE BENEFITS

(For Children of Living Wage Earner or Self-Employed Person)

NOTICE—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a $1,000 fine or 1 year of imprisonment, or both.

Enter Name of Wage Earner or Self-Employed Person (*Herein referred to as the "Worker"*).	Enter His Social Security Number
Albert de Castro	335 09 5167

Enter Your Full Name: Helen de Castro

I hereby apply, on behalf of the child or children listed in Item 1 below, for all insurance benefits payable to them under Title II of the Social Security Act, as amended. (*If you are applying on your own behalf, answer the questions on this form with respect to yourself.*)

1. Does the worker have ANY living children (including natural children, adopted children and stepchildren) who are now or were during any of the past 12 months UNMARRIED and:

- UNDER AGE 18 ☐ Yes ☒ No
- AGE 18 TO 22 AND ATTENDING SCHOOL ☐ Yes ☒ No
- DISABLED (age 18 or over and disability began before age 18) ☒ Yes ☐ No

(*List ALL such children in order of birth beginning with the oldest.*)

FULL NAME OF CHILD / CHILD'S SOCIAL SECURITY NUMBER	CHECK (✓) SEX OF CHILD M	F	DATE OF BIRTH (Mo., day, yr.)	Check (✓) if Child 18 or Over is Student or Disabled: Student	Disabled	Check (✓) the Column That Shows Child's Relationship to Worker: Legitimate	Adopted	Stepchild	Other
Catherine de Castro None		X	4/10/49		X				

EXHIBIT 4 (4M)

If you are not applying for any child you name, enter the child's name under "Remarks" (page 4 of this form) and explain why you are not applying for such child. You may apply for a child even though you do not wish be the payee for the child's benefits.

2. If any children in item 1 are stepchilden of the worker enter the date the worker married the natural parent. — Date of Marriage:

FORM SSA-4 (1-70) (Over)

3. If any children in item 1 are adopted children of the worker, enter below the name of each such child and the date the worker adopted him(her).

Name of Adopted Child	Date of Adoption
N/A	

4. Have any children in item 1 ever been adopted by someone other than the worker? ☐ Yes ☒ No
(*If "Yes," enter the following information*):

Name of Child	Date of Adoption

5. Have all of the children in item 1 lived with the above worker during each of the last 13 months (counting the present month)? ☐ Yes ☒ No
(*If "No," enter the information requested below.*)

Name of Child Who Did Not Live With The Worker In Each of The Last 13 Months	List Each Month in Which This Child Did Not Live With The Worker	Person With Whom Child Lived: Name and Address	Person With Whom Child Lived: Relationship to Child
Catherine	nil	Helen de Castro 4545 N. Lincoln Ave. Chicago Ill. 60625	Mother

6. Are all the children in item 1 now living in the same household with you? ☒ Yes ☐ No
(*If "No," enter the following information about each child not living with you. If uncertain as to the whereabouts of any of these children, explain under "Remarks" on last page.*)

Name of Child Not Living With You	Person With Whom Child Now Lives: Name and Address	Person With Whom Child Now Lives: Relationship to Child

7. Has anyone ever before filed an application with the Social Security Administration for monthly benefits on behalf of any child in item 1? ☒ Yes ☐ No
(*If "Yes," enter below the name(s) and social security number(s) of the person(s) on whose earnings record any other claim was based.*)

Name of Wage Earner or Self-Employed Person	Social Security Number (*If unknown, so indicate*)
Albert de Castro	335 09 5167

8. Has any child in item 1 ever been married? ☐ Yes ☒ No
(*If "Yes," enter the information requested below.*)

Name of Child	Date of Marriage (*Month, Day, Year*)
How Marriage Ended (*If still married, write "Not Ended"*)	**Date Marriage Ended** (*Month, Day, Year*)

9. Do you understand that all payments made to you on behalf of a child must be spent for his present needs or (if not presently needed) saved for his future needs, and do you agree to use the benefits that way? ☒ Yes ☐ No

10. Do you agree to notify the Social Security Administration promptly when your address and/or the address of any child is changed or if you no longer have responsibility for the welfare and care of any child for whom you are filing? ☒ Yes ☐ No

If you are filing ONLY for a child age 18 or over who is disabled, you may omit items 11, 12, and 13 and go on to item 14. In all other cases, items 11, 12, and 13 must be answered.

Please read the following information before going on to item 11.

Some or all of a child's benefits may not be payable if the child earns more than $1,680 in a year.* If he earns more than $1,680, benefits may be withheld for any month in which he earns more than $140 in wages or performs substantial services in self-employment. Count the gross wages (not the take-home pay) earned during the year, regardless of when the wages are paid. Count the net earnings from self-employment (after deducting allowable business expenses). Include all earnings from employment and self-employment, whether or not the work is covered by social security.

11. (a) Do you expect the total earnings of any child to be more than $1,680 this year? (Count all earnings beginning with the first of this year and all anticipated earnings through the end of this year.) ☐ Yes ☒ No

If "Yes," answer (b). If "No," go on to item 12.

(b) Name of Child Who Expects To Earn Over $1,680 This Year	Expected Earnings	List Each Month (including the present month) That Child Did Not Earn More Than $140 in Employment and Did Not Perform Substantial Services in Self-Employment
	$	
	$	
	$	

12. (a) Did any child earn more than $1,680 last year? ☐ Yes ☒ No

If "Yes," answer (b). If "No," go on to item 13.

(b) Name of Child Who Earned Over $1,680 Last Year	Total Earnings of Child	List Each Month That Child Did Not Earn More Than $140 in Employment and Did Not Perform Substantial Services in Self-Employment
	$	
	$	
	$	

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which any child earned more than $1,680* and received some benefit payment for a month in that year. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS.

13. Do you agree to file the annual report of earnings when required? ☒ Yes ☐ No

* The taxable period referred to in this and subsequent items is the calendar year used to figure income taxes. If any of the children for whom you are filing use a fiscal year that does not end December 31, enter here the name of the child and the month the fiscal year ends. →

Name of Child and Month Fiscal Year Ends

(Over)

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF:

- Any child MARRIES, DIES, or is ADOPTED
- A student, age 18 to 22, STOPS ATTENDING SCHOOL, REDUCES HIS SCHOOL ATTENDANCE BELOW FULL-TIME, CHANGES SCHOOLS, or IS PAID BY HIS EMPLOYER TO ATTEND SCHOOL.
- A disabled child, age 18 or over, DISABLING CONDITION IMPROVES, GOES TO WORK, or if now hospitalized is DISCHARGED FROM THE HOSPITAL.

Benefits may end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

14. Do you agree to notify the Social Security Administration promptly if any of the above events occur, and to promptly return any benefit check you receive for a child which is not due? ☒ YES ☐ No

Remarks: *(You may use this space for any explanations. If you need more space, attach a separate sheet.)*

My pension claim was denied because my former husband was found not disabled

My husband and I were divorced in 1968. I am 53 years old.

RECEIVED
DIO
APR 16 4 01 PM '71

I know that anyone who makes a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law. I affirm that the above statements are true.

SIGNATURE OF WITNESSES	SIGNATURE OF APPLICANT
If this application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.	Signature (First name, middle initial, last name) (Write in ink)
1. Signature	Sign Here ☒ Mrs. Helen de Cristo
Address (Number and Street, City, State and ZIP Code)	Mailing Address (Number and street, Apt. No., P.O. box, or Rural Route) 4545 N. Central Pk. Apt
2. Signature	City and State Chicago Ill. ZIP Code 60625
Address (Number and Street, City, State and ZIP Code)	Date (Mo., day and year) Telephone number 583-4162
	Enter name of county (if any) in which you now live Cook

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

IN REPLYING ADDRESS:
SOCIAL SECURITY ADMINISTRATION

July 26, 1971

U. S. Veterans Administration
88A Section
1131 Roxas Boulevard, Manila D-406

Mr. Albert De Castro
Alaminos, Pangasinan C-303

TELEPHONE 59-80-11

Dear Mr. De Castro:

Re: A/W 335-09-5167 A

In connection with your claim for social security benefits, we need the additional information listed below.

After you have filled in the item(s) and signed your name, please return this letter to us. If you are unable to furnish this information or need assistance, please call at our office or notify us by mail or telephone. If you call in person, please bring this letter with you.

Sincerely yours,

E. F. Gibbs

E. F. GIBBS
Contact Officer

Enclosure 1

Please indicate below the complete address of your divorced wife and disabled child in Chicago, Illinois.

EXHIBIT 5

We must receive this information by August 13, 1971 so that further action can be taken on the claim.

Helen Krupinski
4545 N. Central Park Ave.
Chicago, Illinois

Katharine K. de Castro
4545 N. Central Park Ave.
Chicago, Illinois

Knowing that anyone making a false statement or representation of a material fact for use in determining the right to or the amount of Federal social security benefits or in determining an individual's disability, commits a crime punishable under Federal law, I certify that the above statements are true.

July 29, 1971
(Date signed)

SIGN HERE ♦ Albert de Castro
(Please sign here)

FORM SSA-L752 (10-68)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

FORM APPROVED
BUDGET BUREAU 72R327.3

DISABILITY DETERMINATION AND TRANSMITTAL

1. FOLDER NO. — MD ☐ — W ☒ — RR ☐
2. DATE APP'D. 07/26/71
3. W/E (If Auxiliary Filing) — Albert de Castro — CLAIM W/E ☒ — RR W/E ☐
4. SOCIAL SECURITY ACCOUNT NUMBER 335-09-5167 A
5. NAME AND ADDRESS OF CLAIMANT — Helen de Castro for Catherine de Castro, 4545 N Central Park Av, Chicago Il 60625
6. DOB 04/10/49
7. SEX M ☐ F ☒
8. RACE W ☐ N ☐ O ☐
9. ADD'L birth
10. AT AGE birth
11. CLAIM FOR — FATHER ☐ RR ☐ CHILD ☒ SPOUSE ☐
12. FAMILY STATUS — MARR. ☐ SEP. OR DIV. ☐ NO. CHILDREN (UNDER 18) None
13. QC REQ. LAST MET ☐
14. ☐ W/E DOES NOT MEET QC REQ. — A ☐ GEN. ADM REVIEW — B ☐ SINCE LAST DET.
15. PREV. DEFIED OR TERM. ☐
16. SSA-831 REV IN PROGRESS SD ☒
17. MED. DEV. DEF. ☐
18. S A CODE 140
19. STATE Il
20. DISTRICT OFFICE ADDRESS — 2306 W Lawrence Av, Chgo Il 60625
DO CODE 499
RO CODE 51

FILE REVIEWED & APPROVED FOR TRANSMITTAL
21. CLAIMS REPRESENTATIVE — J. Bills
22. DATE OF TRANSMITTAL 07/26/71

23. REMARKS — Phone # 588-4162 — All d/o development complete.
PRESCRIBED PERIOD

RECEIVED CASI
AUG 2 '71

PURSUANT TO PROVISIONS OF SEC. 221 OF SOCIAL SECURITY ACT, IT IS DETERMINED THAT THIS CLAIMANT:

24. ☒ HAS BEEN UNDER A DISAB. SINCE — before age 6
25. ☐ WAS UNDER A DISAB. — A. DATE FROM — B. TO
26. ☐ WAS NOT UNDER A DISAB. ON OR BEFORE (Date)
27. ☐ WAS NOT UNDER A DISAB.
28. CASE OF BLINDNESS AS DEFINED IN SEC. 216(i) — A ☐ NOT UNDER A DISAB. FOR CASH BENE. PURP. — B ☐ UNDER A DISAB. FOR CASH BENE. PURP. SINCE
29. DIAGNOSIS — mental Deficiency
29A. MDR CODE A
31. VOCATIONAL BACKGROUND (Occupation) — None
OCC. YEARS None
EDUC. YEARS Special
32. BASIS FOR DETERMINATION — 1502 (a)1 DISM 12.05 B

Interview indicates that doctor advised Mother of retardation, mental, when child was about 3. A Stanford-Binet Intelligence Test given 7-29-67 indicated an IQ of 30.

EXHIBIT 6

☐ CONTINUED ON ATTACHED SHEET (Use SSA-834)

34. DISABILITY EXAMINER'S S A — Jesse Hayes
35. DATE 8-13-71
36. REVIEW PHYSICIAN — M Otter MD
37. DATE 8-17-71

TO BE COMPLETED BY SSA

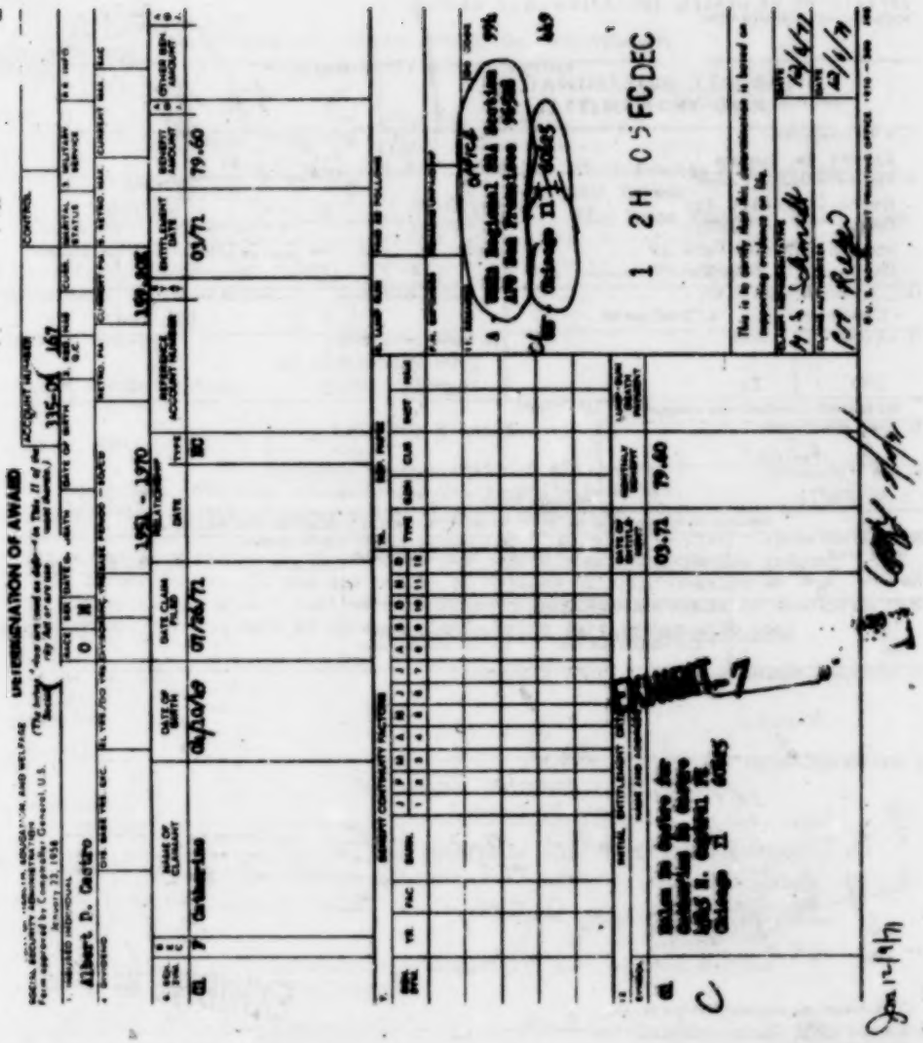
38. ☒ CHILD'S DISABILITY BEGAN BEFORE AGE 18 AND CONTINUES. ☐ CHILD NOT UNDER A DISABILITY WHICH BEGAN BEFORE AGE 18.
39. ☐ W/E MEETS QC REQ. ON _____ DTE. ☐ W/E DOES NOT MEET QC REQ. HAS ____ QY ____ QTRS. FOR ACCD ENDING _____
40. A PERIOD OF DISABILITY IS ☐ ESTABLISHED FROM _____ TO _____ ☐ NOT ESTABLISHED
41. REMARKS — Claimant incapable IQ 30 PC - Chicago, Illinois 60604

42. RE-EXAM REQ. — None
43. DISABILITY EXAMINER
44. DATE
45. DISABILITY EXAMINER — W Sallaber 15 DT
46. DATE 9/15/71

CLAIMANT TO BE NOTIFIED BY:
47. ☐ SSA ☒ RC
48. STR. RAK. NO.
49. PRIOR ACT. ☐ TD ☐ PT ☐ REVISED
50. BASIS CODE 1
51. A OR B CODE A-1
52. RS TURN CODE
53. CAT. ☐ W ☐ DIB ☐ OSP ☒ DIC ☐ FT
54. SPECIAL CODE ☐ VA ☐ VAD
55. LIST NO.

FORM SSA-831 (11-69)

1-FOLDER COPY.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration

Form Approved
OMB No. 72-R0154.

Do not write in this space

Rec'd
4-23-71
Typed
600.25
ADB.

APPLICATION FOR WIFE'S INSURANCE BENEFITS

If you are awarded monthly benefits based on this application and such benefits continue to age [illegible], you will automatically have hospital insurance protection under Medicare at age 65. You may also use this application to enroll in the Supplementary Medical Insurance Benefits Plan under Medicare.

NOTICE: Whoever makes or causes to be made [illegible] statement or representation of a material fact in an application or for use in [illegible] payment under the Social Security Act is subject to not more than a $1,000 fine or 1 year [illegible], or both.

Print Name of Wage Earner or Self-Employed Person (Hereinafter referred to as the "Worker")	Enter His Social Security Number
Albert D. De Castro	335 | 08 | 5167
Print Your Full Name (First name, middle initial, last name)	**Enter Your Social Security Number** (If none or unknown, so indicate)
Helen De Castro	345 | 12 | 5424

I hereby apply for entitlement to all [illegible] benefits which may be payable to me under Title II and Part A of Title XVIII of the Social Security Act [illegible].

1. (a) Enter your date of birth (Month, day, year) 2-18-15	(b) Was [illegible] religious [illegible] Yes ☐ No ☐ Unknown [illegible] Yes ☐ No ☐ Unknown	Enter name of State or foreign country where you were born Illinois
2. Enter your maiden name	[illegible] Bonfinelli	
3. (a) Have you ever before filed [illegible] for monthly social security benefits or for [illegible] insurance under Medicare? ☒ Yes (If "Yes," answer [illegible] (c) and (e).) ☐ No (If "No," go on to [illegible])		(b) Enter name of person on whose earnings record you filed other application Helen De Castro
(c) Enter Social Security Number of person named in [illegible] (If unknown, so indicate) 345 | 16 | 5424	[illegible] you now receiving benefits on this record? ☐ Yes ☒ No	(d) What kind of benefits are you receiving? (For example, retirement, mother, widow) none
4. (a) Are you so disabled now that you cannot work, or was there some period during the last [illegible] when you were so disabled that you could not work? ☐ Yes (If "Yes," answer (b).) ☒ No (If "No," go on to [illegible])		(b) Enter the date you became disabled (Month, day, year) EXHIBIT 8 (4-11)

If you are now AGE 62 or older, or you will reach AGE 62 in this month or one of the next 3 months, answer items 5 and 6. If not, go on to Item 7.

5. Were you in the active military or naval service (active duty or active duty for training) after September [illegible], 1940?	☐ Yes	☒ No
6. Did you or the worker work in [illegible] employment at any time on or after January 1, 1937?	☐ Yes	☒ No

FORM SSA-2 (3-71) [illegible]

BEST COPY AVAILABLE

7. (a) Check (✓) whether your marriage to the worker was performed by:
Clergyman or authorized public official [X] or Other [ ] (Explain)

(b) Enter below the information requested about each of your marriages. Include information on your marriage to the worker and any other marriages, whether before or after you married the worker.

		To whom married	When (Mo., day, and year)	Where (Enter name of city and State)
Current or last marriage		Albert De Castro	10-18-35	Chicago Ill
	How marriage ended (If still in effect, write "Not Ended")		When (Mo., day, and year)	Where (Enter name of city and State)
	Divorce		Jan 1969	Chicago Ill
Previous marriage	To whom married	Bill Ceralde	1933	Chicago
	How marriage ended		When (Mo., day, and year)	Where (Enter name of city and State)
	Divorce		Oct 11, 1935	Chicago Ill

(Use "Remarks" space on back page for information about any other marriage)

8. Answer item 8 only if you are applying as a divorced wife.
(a) Was the worker under court order to contribute to your support? [X] Yes [ ] No
(b) Was the worker contributing to your support? [ ] Yes [X] No

If you are now under AGE 66, answer item 9. If you are AGE 66 or over, go on to item 10.

You can get a wife's benefit for any month in which you have in your care a child of the worker entitled to insurance benefit because he (she) is:
under age 18, or • disabled (age 18 or over and disability began before age 18)

Note: A child age 18 to 22 entitled as a full-time student will NOT enable you to meet the "in his care" requirement. A divorced wife cannot be entitled to benefits for months before age 62 even if she has an entitled child in her care.

9. Has any unmarried child of the worker (*including natural child, adopted child, or stepchild*) who is under 18 or disabled lived with you during any of the last 13 months (counting the present month)? [X] Yes [ ] No
(If "Yes," enter the information requested below)

Name of child	Months child lived with you (If all, write "All")
Catherine Dorothy DeCastro	all months

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE YOU ANSWER ITEMS 10 THRU 14.

HOW YOUR EARNINGS AFFECT YOUR BENEFITS

Some or all of your benefits are not payable if either you or the worker earn more than $1,680 in the year.*

In figuring your earnings for the year, count gross wages (not take-home pay) and net self-employment income. This applies to all employment and self-employment, whether or not covered by Social Security.

If you earn over $1,680, $1 in benefits may be withheld for each $2 of earnings you have between $1,680 and $2,880, and $1 in benefits may be withheld for each $1 of earnings you have over $2,880. No matter how much you earn in a year, you are entitled to a benefit for any month in which you do not earn wages of over $140 and do not perform substantial services in self-employment.

*The years period referred to in this and following items is the same 12-month period you use in figuring your income tax. If you use a fiscal year (that is, a taxable year that does not end December 31 (with income tax return due April 15), enter here the month your fiscal year ends. → Month

BEST COPY AVAILABLE

10. (a) How much were your total earnings last year? ..... $ none
If the total is over $1,680 AND you were age 62 or over last year, answer (b). Otherwise, go on to item 11.
(b) Did you earn more than $140 in employment or perform substantial services in self-employment in each month of last year?
[ ] Yes (*If "Yes," omit (c).*) [ ] No (*If "No," answer (c).*)
(c) Circle each month of *last year* in which you did not earn more than $140 in employment *and* did not perform substantial services in self-employment.
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

11. (a) How much do you expect your total earnings to be this year? ..... $ none
If the total is over $1,680 answer (b). If less, omit (b), (c) and item 12.
(b) Did you or will you earn more than $140 in wages or perform substantial services in self-employment this month and all past months of this year?
[ ] Yes (*If "Yes," omit (c).*) [ ] No (*If "No," answer (c).*)
(c) Circle each month of this year through the current month in which you did not or will not earn more than $140 in employment and did not or will not perform substantial services in self-employment.
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

12. (a) Do you expect to earn more than $140 in employment or perform substantial services in self-employment in each of the next 4 months?
[ ] Yes (*If "Yes," omit (b).*) [ ] No (*If "No," answer (b).*)
List each of the next 4 months in which you do not expect to earn more than $140 in employment *and* do not expect to perform substantial services in self-employment.

Answer item 13 if you are now in the last 4 months of your taxable year (Sept., Oct., Nov., and Dec., if your taxable year is a calendar year).

13. How much do you expect your total earnings to be next year? ..... $ none

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which you earned more than $1,680, if you were under age 72 at least 1 full month of that year and received some benefit payment for such a month. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS.

14. Do you agree to file the annual report of earnings when required? [X] Yes [ ] No

If you are now under AGE 66 and do not have an entitled child in your care, answer item 15. If you are AGE 66 or older, or you have an entitled child in your care, go on to item 16.

This application for wife's benefits may be retroactive for as many as 12 months from the date it is filed but not for any month before age 62 unless you have an entitled child under age 18 or disabled in your care. If you choose to receive benefits before you reach age 65, your benefits will be payable at a reduced rate and will continue at a reduced rate even after you reach age 65.

15. (a) I want benefits for all the past 12 months in which I was at least age 62. (This applies if you are now age 62 or over or will be age 62 in 3 months) [ ]
OR
(b) I want benefits beginning only with the month I reached or will reach age 65. (This applies if you are now age 65 or over or will be age 65 in 3 months) [ ]
OR
(c) I want benefits for months before age 65 (months in which I was at least age 62 or over) beginning with the month of: _____ (*Enter month and year*) [ ]

(Over)

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF:

- The worker DIES. (You might be entitled to widow's or widower's benefits.)
- You are DIVORCED or your marriage is ANNULLED.
- You MARRY. (If you are entitled as a divorced wife.)
- You NO LONGER HAVE IN YOUR CARE a child of the worker entitled to benefits because he (she) is under age 18 or disabled.

Benefits may end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how your benefits may be affected.

16. Do you agree to notify the Social Security Administration promptly if any of the above events occur, and to promptly return any benefit check you receive if the check is for a month in or after the month in which any of the above events occurred? ☒ Yes ☐ No

REMARKS: (*You may use this space for any explanations. If you need more space, attach a separate sheet.*)

I know that anyone who makes a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law. I affirm that the above statements are true.

SIGNATURE OF APPLICANT

Signature (Name, middle initial, last name) (Write in ink)

SIGN HERE ▶ Helen de Castro

Date (Month, day, year) 9-23-71

Telephone Number 588-4162

Mailing Address (Number and street, Apt. No., P.O. Box, or Rural Route)

4545 N. Central Park

City and State: Chicago Ill.

ZIP Code: 60625

Enter Name of County (if any) in which you now live: Cook

Witnesses are required ONLY if this application has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the applicant must sign below, giving their full addresses.

1. Signature of Witness	2. Signature of Witness
Address (Number and street, City, State, and ZIP Code)	Address (Number and street, City, State, and ZIP Code)

Answer the question below only if you are now AGE 65 or older, or you will reach AGE 65 in this month, or one of the next 3 months.

ENROLLMENT IN THE SUPPLEMENTARY MEDICAL INSURANCE BENEFITS PLAN

Your social security office will be glad to explain this plan and to give you a leaflet containing information on the physicians' and surgeons' services and other medical services covered, premium amounts, enrollment periods, etc. A request for enrollment cannot be effective unless it is made within one of the enrollment periods specified in the law. If you do not enroll within your initial enrollment period, you may have to pay a higher premium and your coverage will be delayed.

Do you wish to enroll in the supplementary medical insurance benefits plan? (Premium payments will be due. Where possible, these payments will be deducted from your monthly benefit check.)

☐ Yes ☐ No ☐ Undecided ☐ Currently enrolled

Sign below regarding medical insurance benefits plan.

SIGN HERE ▶

DETERMINATION OF DISALLOWANCE

DISTRICT OFFICE	STATE	CO CODE	WAGE EARNER'S NAME	SOCIAL SECURITY NUMBER
Ch. Ago	IL	497	Alberto DeCastro	335-09-5167

REVIEWING OFFICE: MY P SSR CH SP EC RBM DPC

RELATED SOCIAL SECURITY NUMBER:

HF- V I V 13

List only the basic reason in the CODE NO. block below. If this code number requires a fill-in, enter the information under "Remarks." Show any additional reasons under "Remarks."

SYMBOL	CODE NO.	FILING DATE	NAME AND ADDRESS OF CLAIMANT
	836	01/24/72	Helen DeCastro 4545 N Central Park Av Chicago IL 60625

Fill in when any disallowance code 01–26, 110 or 124 is listed. Disallowance Codes are listed in CM 4939.

WAGE EARNER BORN ON	WAGE EARNER DIED ON

QUARTERS OF COVERAGE INFORMATION (Fill in as appropriate)

TYPE	REQUIRED	HAD
Fully		
Currently	6 out of Last 13	
Transitionally		
Deemed Insured - HIB		
Special Payment - Age 72		

REMARKS:

Since your legal marriage date was 9/9/46 and the date of your divorce from the wage earner was 1/19/65, you do not meet the 20 year duration of marriage requirement. Therefore we are denying your claim.

DISALLOWANCE NOTICE NO. (If to be sent by 1/21-Exp)

L229F

DISALLOWANCE TO BE SENT OR EFFECTUATED BY (If to be sent by 1/21-Exp)

-5 #

EXHIBIT 14-

ADDITIONAL INSTRUCTIONS:

If he entitled as a divorced wife you must have been married for the wage earner for a period of 20 years immediately before the date the divorce became final. Since your first marriage of 10/4/37 was invalid because your divorce from your first husband was not final we must

☐ OA-C370 or OA-D865 attached

DETERMINATION BY	DATE	APPROVED BY	DATE
T. Mulholland	4/4/72	J. Keegan	4/7/72

☐ CLAIMS REPRESENTATIVE ☒ CLAIMS AUTHORIZER
☐ FIELD REPRESENTATIVE ☐ OTHER (Specify)

TITLE: CLAIMS AUTHORIZER

FORM SSA-201 (7-68) NSN 7740-184-1537

UPC- Recon Pizzey 4/3/3

Form Approved. OMB No. 72-R0552 (Do not write in this space)

4/26/72
499
LP

RECONSIDERATION

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON: Alberto DeCastro

SOCIAL SECURITY CLAIM NUMBER: 335-09-5167B

NAME OF CLAIMANT (If different from person named above): Helen DeCastro

CLAIM FOR (Specify type, e.g., retirement, disability, hospital insurance, etc.): wife's benefit

Divorced

I do not agree with the determination made on the above claim and request reconsideration.

My reasons are:

I was first married in 1937. At that time I did not know my divorce from my first husband had not gone through. As soon as we found out Mr. DeCastro and I remarried. It

NOTE: If the date of the notice of the determination on this claim was more than six months ago include your reason for not making this request earlier.

I am submitting the following additional evidence (If none, write "None."):

does not seem reasonable that the period from 1937 - 1946 cannot be counted toward the 20 year marriage requirement as I believed during this entire period that we were legally married.

Signature (First name, middle initial, last name) (Write in ink)

SIGN HERE ▶ Helen de Castro

Date (Month, day, year): 4/26/72

Telephone Number: 588-4162

Mailing Address (Number and street, Apt. No., P.O. Box, or Rural Route): 4545 N Central Park Ave.

City and State: Chicago, Illinois

ZIP Code: 60625

Enter Name of County (if any) in which you now live: Cook

Witnesses are required ONLY if this request has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the person requesting reconsideration must sign below, giving their full addresses.

1. Signature of Witness	2. Signature of Witness
Address (Number and street, City, State, ZIP Code)	Address (Number and street, City, State, ZIP Code)

FOR SOCIAL SECURITY OFFICE USE ONLY

PROVIDER NAME AND NUMBER (City and State)	INTERMEDIARY NAME AND NUMBER (City and State)	SOCIAL SECURITY OFFICE ADDRESS
		EXHIBIT 5

ROUTING INSTRUCTIONS (Check one)

- ☐ State Agency (Route with disability folder)
- ☐ Payment Center _____ BDI, Balto. ☐
- ☐ _____ Intermediary ☐ DRB, Balto.
- ☐ Division of Foreign Claims, Balto.
- ☐ BDPA, Attn: CWAB, Balto.
- ☐ _____ RO (Emergency)

FORM SSA-561 (4-71) NOTE: Take or mail completed copies to your Social Security Office.

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

RECONSIDERATION DETERMINATION

PAYMENT CENTER	DISTRICT OFFICE OR BRANCH OFFICE
Baltimore, Maryland 21203	Chicago, Illinois 60605
NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON: Albert de Castro	SOCIAL SECURITY CLAIM NO.: 335-09-5167
NAME OF CLAIMANT: Helen de Castro	TYPE OF CLAIM: Wife's Insurance Benefits

DETERMINATION:

Helen de Castro filed an application for wife's insurance benefits as a divorced wife on the account of Albert de Castro on September 23, 1971. Her claim was denied because she and the wage earner had not been legally married for 10 years prior to the date of her divorce. Notice of this determination was dated April 11, 1972. Mrs. de Castro requested reconsideration on April 26, 1972.

The primary issue to be resolved is whether Helen de Castro is entitled to wife's insurance benefits as a divorced wife.

Section 202(b) of the Social Security Act provides for the payment of wife's insurance benefits to the wife and every divorced wife of an individual entitled to retirement insurance benefits. In the case of a divorced wife, she must be at least age 62 and not married. She must also have been receiving at least one-half of her support from the wage earner, or receiving substantial contributions pursuant to a written agreement, or there must have been in effect a court order for substantial contributions, at the time the wage earner became entitled to retirement insurance benefits.

Section 216(d) of the Act defines the term divorced wife as a woman divorced from an individual who had been married to the individual for a period of at least 10 years immediately before the day the divorce became final.

Helen de Castro was born February 18, 1915, and will not attain age 62 until February 1977. Therefore, on the basis of her age alone, she is not entitled to divorced wife's benefits. Accordingly, it is determined upon reconsideration, that Helen de Castro is not entitled to divorced wife's insurance benefits because she has not attained age 62.

AUTHORITY: Social Security Act, as amended, sections 202(b) and 216(d).

REMARKS: Since Mrs. de Castro cannot be entitled to benefits because she is not age 62, no decision has been made on whether she meets the 20 year duration of marriage requirement or the support requirements.

James J. Howard
Chief, Reconsideration Branch

AUG 25 1972

Date

cc:
DO, Chicago, Illinois 499

ASbpiegelmanter 8/24/72

333-07 3101

CATHOLIC CHARITIES GUIDANCE CENTER
ARCHDIOCESE OF CHICAGO
126 NORTH DESPLAINES STREET CHICAGO 6, ILLINOIS
TELEPHONE CENTRAL 6-3172

CONFIDENTIAL INFORMATION FOR YOUR USE ONLY

CGC P.C.

DE CASTRO, Catherine — Born 1-9-49 — 1-16-63

Ref: Sister Mary Catherine — Tested at: St. Mary of Providence School

PSYCHOMETRIC EXAMINATION:

Cattell Infant Intelligence Scale		Wechsler Intelligence Scale for Children	
Stanford-Binet, Form L-M		Verbal Scale Raw Score	0
C.A. 13-9		Performance Scale Raw Score	0
M.A. 2-8		Full Scale Raw Score	0
I.Q. [illegible] below 30; within the low grade range			

Sister Mary Catherine requested the examination of Catherine to determine her rate of mental growth. The record contains a Bureau of Child Study report stating that Catherine had been examined with the Stanford-Binet Scale in 1955, 1956 and 1957. On the first test she completed several items at the first two levels. Results of the re t two years are: CA 7-3, MA 2-8 (Approximately) and IQ 30 (Approximately); CA 8-1, MA 2-11, and IQ 36. Catherine entered St. Mary Day School on November 7, 1960 and transferred to St. Mary of Providence in September, 1962.

Catherine is of average height and weight. She has a shuffling gait, moves awkwardly, and drools consistently. Alone, confined with her full appreciation, limited awareness of her environment, and extremely laconic speech, gives the most a few words only singly and in short sentences, are indicative of exceptionally limited mental functioning. Catherine cooperated well, trying, testing and accepted all items presented. She could understand only the simplest Binet Scale items and manifested no knowledge of what was expected on the WISC subtests.

Results of the Cattell and Stanford-Binet Scales indicate that Catherine's mental functioning is at the level for average children two years, eight months old. Since she is already fourteen years old, development is progressing at an exceptionally slow rate. The highest age she obtained on the eighteen month level of the Cattell Scale with Stanford-Binet Scale experience ranging through the four and one-half year level. Catherine could identify only one of the pictures (automobile) items, which was her only failure at Year II. She typically vocalized play when she could manage, but her level of understanding was very much below age expectations, many like that of a two or three year old child. This was also reflected in her total lack of awareness of what was expected on the WISC performance subtest. She was score on all subtests was zero. When asked to draw a picture and to put her name on paper, Catherine merely made a few straight lines.

In summary, present testing indicates that Catherine's mental functioning is within the low grade mentally retarded range. Prognosis for the future is poor; she will continuously require custodial care and intensive supervision. It is suggested that Catherine's level of functioning be discussed with her family in order to aid them in making realistic plans for this child's future.

Angela Spanner,
Psychologist

Very limited - could not attend -

EXHIBIT 19

Medical Record

St. Mary of Providence

BEST COPY OBTAINABLE

No. 75-1197

Supreme Court, U. S.
FILED
APR 14 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant,

vs.

HELEN DE CASTRO,

Appellee.

On Appeal From The United States District Court
For The Northern District of Illinois

MOTION TO AFFIRM

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INDEX

	PAGE
Question Presented for Review	2
Statutory Provisions Involved	2
Statement of Facts	4
Argument	5
Conclusion	9

CITATIONS

Richardson v. Belcher, 404 U.S. 78 (1971)	5
Shapiro v. Thompson, 394 U.S. 618 (1969)	8
Weinberger v. Salfi, 442 U.S. 749 (1975)	6
Weinberger v. Wiesenfeld, 420 U.S. 636 (1975)	6, 9
U.S. Constitution, Fifth Amendment	2, 5

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1197

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant,

vs.

HELEN DE CASTRO,

Appellee.

On Appeal From The United States District Court
For The Northern District of Illinois

MOTION TO AFFIRM

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court:

Appellee, HELEN de CASTRO, prays that an order issue affirming the judgment of the United States District Court for the Northern District of Illinois entered on September 30, 1975.

QUESTION PRESENTED FOR REVIEW

Whether Section 202(b)(1) of the Social Security Act, 42 U.S.C. §402(b)(1), which denies benefits to a divorced wife of a wage-earner who has not attained age 62, but who has an entitled child of the wage-earner in her care violates the Due Process Clause of the Fifth Amendment.

STATUTORY PROVISIONS INVOLVED

The provisions of the Social Security Act at issue are as follows:

Section 202(b)(1) of the Social Security Act, 42 U.S.C. §402(b)(1) provides:

> The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—
>
> (A) has filed application for wife's insurance benefits,
>
> (B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,
>
> (C) in the case of a divorced wife, is not married, and
>
> (D) is not entitled to old-age or disability insurance benefits or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual, shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month beginning with the first month in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs—

> (E) she dies,
>
> (F) such individual dies,
>
> (G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 20 years immediately before the date the divorce became effective,
>
> (H) in the case of a divorced wife, she marries a person other than such individual,
>
> (I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,
>
> (J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount of such individual, or
>
> (K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Section 216(d)(1) of the Social Security Act, 42 U.S.C. §416(d)(1) provides:

> The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective.

STATEMENT OF FACTS

The material facts in this case, which are set out in the appellant's jurisdictional statement as well as the opinion of the District Court (Part I, App. A, p. 3a, Appellant's Jurisdictional Statement), are not in dispute. Appellee, who was born on February 18, 1915, has not attained age 62. She and the wage-earner, ALBERT de CASTRO were validly married on September 9, 1946, and were divorced on February 8, 1968, after more than 20 years of marriage. Two children were born of the marriage, namely ROSEMARY de CASTRO and CATHERINE de CASTRO. CATHERINE de CASTRO, a mentally disabled child entitled to child's insurance benefits, requires continuous custodial care and supervision. She has been in the appellee's care at all relevant times, and particularly since December 5, 1966, when ALBERT de CASTRO deserted appellee and his family and returned to the Philippine Islands where he has since remained. Appellee is not married and is not entitled to old age or disability insurance benefits.

On September 23, 1971, appellee filed an application for wife's insurance benefits on the account of ALBERT de CASTRO as the divorced wife of a wage-earner having in her care a child entitled to a child's insurance benefit. Her application was initially denied. After a hearing before an Administrative Law Judge, it was determined that appellee was entitled to wife's insurance benefits effective January 1, 1973. Thereafter, the Appeals Council, on its own motion, reviewed and reversed that decision, concluding that only married but not divorced wives under age 62 with dependent children in their care were entitled to benefits under Section 402(b)(1)(B). Appellee then sought judicial review of the denial of her application for wife's insurance benefits.

ARGUMENT

THE DISTRICT COURT'S DECISION ON THE MERITS OF THE CONSTITUTIONAL QUESTION PRESENTED IS CORRECT AND SHOULD BE AFFIRMED

Under Section 202(b)(1)(B) of the Social Security Act (42 U.S.C. §402(b)(1)(B)), a wife not yet age 62 who has a disabled child in her care is entitled to Social Security benefits, while a divorced wife, not yet 62, is not entitled to such benefits even though she also has a disabled child in her care, all other conditions being equal. The effect of Section 402(b)(1)(B) is, thus, to create two classes of needy women indistinguishable from each other except that the one is composed of women not divorced from their wage-earner husbands, and the second of women who have secured divorces after at least 20 years of marriage. On the basis of this sole difference, the first class is granted and the second class is denied Social Security benefits. The question in this case is whether this distinction based upon the marital status of the woman violates the Due Process Clause of the Fifth Amendment. The three-judge District Court below held that the different treatment accorded married and divorced wives by §402(b)(1)(B) invidiously discriminated against divorced wives in violation of the Fifth Amendment. We respectfully submit that the District Court's Judgment was correct and should be affirmed.

The standard for determining whether a statutory classification is constitutionally sound is whether the classification is rationally based and free from invidious discrimination. *Richardson* v. *Belcher*, 404 U.S. 78 (1971). Under this test, Congressional legislation does not offend the Con-

stitution if the goals to be accomplished are legitimate and the classification adopted is rationally related to the achievement of those goals. As this Court recognized in *Weinberger* v. *Salfi*, 442 U.S. 749, 772 (1975), Congress may not invidiously discriminate among claimants on the basis of criteria wholly unrelated to the object of the legislation. Tested by this standard, it is clear that the classification created by §402(b)(1)(B) bears no reasonable relation to legitimate legislative objectives.

It is apparent from the statutory scheme itself and from the legislative history of §402(b) that the Congressional purpose of providing benefits to wives with children in their care was to enable the wife to remain at home and care for the child.[1] By affording benefits to wives with dependent children in their care, Congress obviously sought to benefit persons such as appellee who, because they must devote full time to the care of their disabled children, are incapable of competing for a living in the national economy. The wife receives benefits not because she is married to the wage-earner, but because the benefits provided to her will enable her to remain at home and care for the children. It is the care of the disabled child which gives rise to the need for benefits. That need exists regardless of whether the child's mother is married, separated or divorced. Given the purpose of enabling mothers to remain at home to care for their children, the statutory distinction here involved based upon the marital status of the female applicant bears no rational relation to the achievement of the Congressional goal.

---

[1] This same congressional purpose to provide children with the opportunity for the full-time care and attention of their parents was found in a companion section of the Social Security Act (42 U.S.C. §402(g)) in *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975).

It must be remembered that we deal here not with every divorced wife, but only with those defined by the Social Security Act. That is, wives who have been married at least 20 years and who presumably have made substantial sacrifices and contributions to the very family units it was the congressional purpose to protect. Why, then, should such wives be denied benefits in preference to wives whose marriages, though intact, are of lesser duration? Why should a wife separated from her husband be entitled to benefits and a divorced wife not, when the only difference between them is the stage to which the breakdown in their respective marriages has progressed? And why should children of wives separated but not divorced or children of wives married but less than 20 years have the advantages and opportunities afforded by their parents' full time care, but not the children of divorced wives? The children of divorced wives deserve the same degree of maintenance and support, care and attention as is accorded the children of other wives. The need for benefits in each case is the same, and should be satisfied for all regardless of the mother's marital state. To withhold benefits from wives divorced after more than 20 years of marriage who are caring for dependent children born of the marriage is to invidiously discriminate against them and their children without any rational basis for so doing.

Appellant suggests in his jurisdictional statement that Congress may draw classifications based upon its assessment of the probable need of individuals, and that the statutory scheme of §402(b) is consistent with the purpose of allocating benefits to those with the greatest need. The assumption evidently is that a married wife having a dependent child in her care has a greater economic need than a divorced wife caring for such a child. The assumption is without foundation in fact or logic. The needs of

wives with dependent children are substantially the same regardless of the wife's marital state. Under such circumstances, Congress' wholly unsubstantiated assessment of the greater need for benefits among wives with children in their care as opposed to divorced wives lacks the rationality required by equal protection guarantees.

Finally, appellant urges that the Congressional interest in preserving the fiscal integrity of the Social Security program is sufficiently important to justify plenary review by this Court. Fiscal problems, as was stated in *Shapiro* v. *Thompson,* 394 U.S. 618, 633 (1969), are legitimate concerns of government. But the government may not attempt to preserve the fiscal integrity of its programs by creating invidious distinctions between classes of its citizens. *ibid.* By providing benefits to married wives, but not divorced wives, Congress is using one's marital status as the criterion for assessing probable need. Similarly situated wives are accorded different treatment solely on the basis of their marital status, without regard to their economic need. Yet marital status is wholly unrelated and in fact irrelevant to a determination of one's need for social insurance benefits. Given the statutory purpose of providing benefits to wives who care for children, the classification created by Section 402(b)(1)(B)—based as it is on the marital status of the applicant—is not rationally related to the achievement of that goal.

Moreover, there is absolutely no evidence in the record either by way of testimony or affidavit, which would support the conclusion that allowing benefits to appellee and others similarly situated will significantly impair the Social Security Trust Fund. In a footnote to the Government's Brief submitted in the District Court, it was estimated that a 1,000 divorced wives as defined in §416(d) would receive

benefits at an additional annual cost of approximately $1,000,000.00 if a ruling were made in appellee's favor. In his jurisdictional statement, appellant now inexplicably estimates that an adverse ruling will entail the payment of approximately $9,000,000.00 in additional benefits (p. 5). Such bald conclusions are suspect and are simply insufficient to justify the invidious discrimination created by the statute involved here. *See also,* the seeming absence of any reliance upon increased costs in the majority and concurring opinions in *Wiesenfeld, supra.*

CONCLUSION

For all the foregoing reasons, it is respectfully urged that the judgment of the United States District Court for the Northern District of Illinois be affirmed.

Respectfully submitted,

THEODORE R. SHERWIN
MARVIN A. BRUSMAN
Attorneys for Appellee

Supreme Court, U. S.
FILED
JUL 14 1976
MICHAEL RODAK, JR., CLERK

No. 75-1197

In the Supreme Court of the United States

OCTOBER TERM, 1976

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

HELEN DE CASTRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLANT

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Constitutional and statutory provisions involved	
Statement	2
Summary of argument	6
Argument:	
Congress is not constitutionally required to make wife's insurance benefits available to the unremarried divorced wife of a retired or disabled wage-earner on the same basis as if she had remained married to the wage-earner	8
Introduction	8
A. The rationale underlying Congress' extensions of secondary insurance benefits to wives does not equally embrace divorced wives death of the wage-earner	13
1. Benefits have been extended to wives in order to ameliorate the impact on the family unit of the retirement, disability or death of the wage-earner	13
2. It was rational for Congress to treat divorced wives, who are no longer members of the wage-earner's immediate family, differently from wives	18

215-623—76——1

Argument—Continued
B. The rationales underlying Congress' extensions of secondary insurance benefits to certain other divorced wives does not support the grant of benefits to younger divorced wives with entitled children in their care ---------- 24
Conclusion ---------- 29

CITATIONS

Cases:

Dandridge v. *Williams*, 397 U.S. 471 ------ 10, 12
Flemming v. *Nestor*, 363 U.S. 603 -------- 6, 9–10
Geduldig v. *Aiello*, 417 U.S. 484 ---------- 10
Jefferson v. *Hackney*, 406 U.S. 535 -------- 10
Mathews v. *Lucas*, No. 75–88, decided June 29, 1976 ---------- 19
Richardson v. *Belcher*, 404 U.S. 78 -------- 12
Weinberger v. *Salfi*, 422 U.S. 749 ------- 6, 10, 12
Weinberger v. *Wiesenfeld*, 420 U.S. 636 - 14, 16, 17
Williamson v. *Lee Optical Co.*, 348 U.S. 483 ---------- 10, 11

Constitution and statutes:

United States Constitution:
Fifth Amendment ---------- 2, 9
Social Security Act, Title II, 49 Stat. 622, as amended, 42 U.S.C. 401 *et seq.*:
Section 202(b), 42 U.S.C. (Supp. IV) 402(b) ---------- 9, 14, 17, 26
Section 202(b)(1)(A), 42 U.S.C. 402 (b)(1)(A) ---------- 3–4
Section 202(b)(1)(B), 42 U.S.C. 402 (b)(1)(B) ---------- *Passim*
Section 202(b)(1)(C), 42 U.S.C. (Supp. IV) 402(b)(1)(C) --------- 3–4

Constitution and statutes—Continued

Section 202(b)(1)(D), 42 U.S.C. (Supp. IV) 402(b)(1)(D) -------- 3–4, 26
Section 202(c), 42 U.S.C. 402(c) ----- 17
Section 202(d), 42 U.S.C. (Supp IV) 402(d) ---------- 9, 17, 23
Section 202(e), 42 U.S.C. (Supp. IV) 402(e) ---------- 9, 15, 17, 24, 26
Section 202(f), 42 U.S.C. (Supp. IV) 402(f) ---------- 17
Section 202(g), 42 U.S.C. (Supp. IV) 402(g) ---------- 9, 15, 17, 24
Section 202(h), 42 U.S.C. 402(h) ---- 9, 23
Section 205(g), 42 U.S.C. 405(g) ----- 5
Section 216(b), 42 U.S.C. (Supp. IV) 416(b) ---------- 3
Section 216(d), 42 U.S.C. 416(d) ----- 26
Section 216(d)(1), 42 U.S.C. 416 (d)(1) ---------- 3
Section 216(d)(2), 42 U.S.C. 416 (d)(2) ---------- 24
Section 216(d)(3), 42 U.S.C. 416 (d)(3) ---------- 24
Section 216(d)(4), 42 U.S.C. 416 (d)(4) ---------- 19
Social Security Act Amendments of 1939, Section 201, 53 Stat. 1364 ---------- 14
Social Security Act Amendments of 1950, 64 Stat. 483, 485–486, 511:
Section 101(a) ---------- 17, 24
Section 104(a) ---------- 24
Social Security Amendments of 1958, Section 205(b)(1), 72 Stat. 1021–1023 ------ 17
Social Security Amendments of 1965, 79 Stat. 375:
Section 308(a) ---------- 24, 26

Constitution and statutes—Continued
Page

Social Security Amendments of 1972, Section 114, 86 Stat. 1348 ---- 24
53 Stat. 1363–1366 ---- 13, 15
53 Stat. 1364 ---- 15
53 Stat. 1365 ---- 15
64 Stat. 485–486 ---- 15
28 U.S.C. 2282 ---- 5

Miscellaneous:

Annotation, 39 A.L.R. 2d 1406 (1955) ---- 25
Bureau of the Census, A Statistical Portrait of Women in the U.S. (1976) ---- 19, 20
Bureau of the Census, Marriage and Divorce (1925) ---- 20
Final Report of the Advisory Council on Social Security (1938) ---- 14, 15, 16
H.R. Rep. No. 213, 89th Cong., 1st Sess. (1965) ---- 26
H.R. Rep. No. 728, 76th Cong., 1st Sess. (1939) ---- 13, 15, 23, 24, 25
H.R. Rep. No. 2288, 85th Cong., 2d Sess. (1958) ---- 18
Report of the Committee on Economic Security, H.R. Doc. No. 110, 76th Cong., 1st Sess. (1939) ---- 15
S. Rep. No. 734, 76th Cong., 1st Sess. (1939) ---- 15
Women and Social Security: Adapting to a New Era, a Working Paper prepared by the Task Force on Women and Social Security for the Senate Special Committee on Aging, 94th Cong., 1st Sess. (1975) ---- 24–25

Miscellaneous—Continued
Page

". . . *To Form a More Perfect Union* . . . ", Report of the National Commission on the Observance of International Women's Year (1976) ---- 20

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75–1197

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

HELEN DE CASTRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion of the district court (J.S. App. A, pp. 1a–18a) is reported at 403 F. Supp. 23.

JURISDICTION

The judgment of the three-judge district court declaring a portion of 42 U.S.C. 402 unconstitutional was entered on September 30, 1975 (J.S. App. B, pp. 19a–20a). A notice of appeal to this Court was filed on October 24, 1975 (J.S. App. C, pp. 21a–22a). On December 12, 1975, the time for docketing the appeal was extended by Mr. Justice Rehnquist to January

22, 1976; on January 8, 1976, Mr. Justice Stevens further extended the time for docketing the appeal to and including February 21, 1976. The jurisdictional statement was filed on February 20, 1976, and probable jurisdiction was noted on May 3, 1976 (App. 9). The jurisdiction of this Court is conferred by 28 U.S.C. 1252. *Weinberger* v. *Salfi,* 422 U.S. 749, 763 n. 8; cf. *McLucas* v. *DeChamplain,* 421 U.S. 21, 31–32.

QUESTION PRESENTED

Whether Congress is constitutionally required to make wife's insurance benefits available to the unremarried divorced wife of a retired or disabled wage-earner on the same basis as if she had remained married to the wage-earner.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be * * * deprived of * * * property, without due process of law * * *.

The relevant provisions of Title II of the Social Security Act, 49 Stat. 622, as amended, 42 U.S.C. (and Supp. IV) 401 *et seq.,* are set forth at J.S. App. D, pp. 23a–25a.

STATEMENT

1. Under Section 202(b)(1)(B) of the Social Security Act, 42 U.S.C. 402(b)(1)(B), the "wife" or "divorced wife" of an individual entitled to old-age or disability insurance benefits is eligible for wife's insurance benefits if, *inter alia,* such wife or divorced

wife has "attained age 62 or (in the case of a wife) has in her care * * * a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual." The term "wife" is defined in Section 216(b) of the Act, 42 U.S.C. (Supp. IV) 416(b), as "the wife of an individual, but only if she (1) is the mother of his son or daughter, [or] (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed * * *." Section 216(d)(1) of the Act defines the term "divorced wife" as "a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective." Thus, whereas the wife of an individual entitled to old-age or disability insurance benefits, who has in her care a child entitled to child's insurance benefits on the basis of her husband's Social Security account, is herself entitled to wife's insurance benefits without regard either to her age or the duration of her marriage to the wage-earner,[1] an otherwise similarly situated divorced wife of the wage-earner is entitled to wife's insurance benefits only if she has attained age 62 and, prior to her divorce, had been married to the wage-earner for at least 20 years.[2] This case involves the

[1] But if the wife is not the mother of the entitled child in her care, to be eligible the wife is required by Section 216(b) of the Act to have been married to the wage-earner for at least a year before her application is filed.

[2] The other conditions on eligibility for wife's insurance benefits are set forth in Section 202(b)(1)(A), (C), and (D) of the

215-623—76——2

constitutionality of the first of these two differences in the treatment of wives and divorced wives, *i.e.*, the validity of the age condition placed on the eligibility of divorced wives, with entitled children in their care, to receive wife's insurance benefits.

2. On September 23, 1971, appellee Helen de Castro, who was then age 56, applied for wife's insurance benefits on the basis of the Social Security account of her divorced husband, Albert de Castro, who had earlier become entitled to old-age insurance benefits (App. 15, 34–37, 51–54). Appellee and Mr. de Castro had been divorced in February 1968, after more than 20 years of marriage (App. 20); appellee was not awarded alimony in the divorce decree (App. 20). At the time she filed the application for wife's benefits, appellee had their 22 year-old daughter in her care; the daughter, who was disabled, was entitled to child's insurance benefits on the basis of Mr. de Castro's Social Security account (App. 44–47, 49–50).[3]

The application was denied initially because appellee had not attained age 62 (App. 55, 57–58). However, the initial determination was reversed after a

Act, 42 U.S.C. (and Supp. IV) 402(b)(1)(A), (C), and (D). In particular, to be eligible, a divorced wife cannot be remarried, nor can either a wife or a divorced wife be entitled to old-age or disability insurance based on a primary insurance amount which is one-half or more of the primary insurance amount of the wage-earner on whose Social Security account the claim for wife's benefits is based.

[3] In 1971, the daughter was receiving $79.60 per month in child's insurance benefits (App. 50). In addition, at the time of divorce the state court ordered Mr. de Castro to pay $35 a week for child support (App. 20), but it appears that he did not make these payments (App. 20).

hearing, and appellee was determined by an administrative law judge to be eligible for benefits (App. 13–33).[4] Thereafter, on its own motion, the Appeals Council reviewed and reversed the administrative law judge's decision (App. 9–13). The Appeals Council concluded that the claimant was not entitled to benefits because she had not attained age 62 and Section 202(b)(1)(B) does not allow the payment of wife's insurance benefits to a divorced wife under 62 years of age (App. 12–13). The Appeals Council's decision became the final decision of the Secretary of Health, Education, and Welfare (J.S. App. A, p. 4a).

Appellee then commenced this suit under Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), seeking (1) a declaratory order that Section 202(b)(1)(B) of the Act unconstitutionally discriminates against divorced wives by precluding them from receiving wife's insurance benefits under any circumstances before they attain age 62, while allowing such benefits to be paid without regard to age to wives who have a qualified child in their care, and (2) injunctive relief against enforcement of the statute in a way that denied her wife's insurance benefits (App. 1–4).

A three-judge district court was convened under 28 U.S.C. 2282 (App. 6). The court granted the declaratory and injunctive relief sought by appellee, holding that there is "no rational justification * * * for dis-

[4] The administrative law judge's decision granting appellee benefits was based on his mistaken construction of Section 202(b)(1)(B) as allowing the payment of benefits to a divorced wife under 62 years of age with a qualified child in her care (App. 31).

tinguishing between married wives and [similarly situated] divorced wives * * *" (J.S. App. A, p. 12a).

SUMMARY OF ARGUMENT

The issue presented by this case is whether Congress violated the Due Process Clause of the Fifth Amendment by granting secondary insurance benefits under the Social Security Act to wives under age 62 who have an entitled child in their care, on the basis of their husband's eligibility as a primary beneficiary to receive old-age or disability insurance benefits, while not extending such benefits to otherwise similarly situated divorced wives. As in other cases involving the constitutional adjudication of a statutory classification under the Social Security Act, this case, in essence, calls into question the power of Congress to allocate insurance benefits in the manner it has chosen.

The Due Process Clause bars Congress only from making allocations that are "'patently arbitrary * * *, utterly lacking in rational justification.'" *Weinberger* v. *Salfi,* 422 U.S. 749, 768, quoting from *Flemming* v. *Nestor,* 363 U.S. 603, 611. Tested by that standard, Congress' allocation of secondary benefits under consideration here is constitutional. The present statutory provisions governing the payment of such benefits to wives and divorced wives are the product of separate legislative decisions made over the life of the Social Security Act, each of which has extended secondary benefits to a category of wife or divorced wife not previously protected. Congress simply has not identified the class represented by appellee—

younger divorced wives with entitled children in their care—as sufficiently in need to require special assistance. Each successive enlargement of the class of wives and divorced wives eligible to receive secondary insurance benefits on the basis of their husbands' or former husbands' Social Security accounts has been bottomed on a particular rationale that did not equally embrace the class of divorced wives represented by appellee.

In general, the payment of benefits to wives of deceased, disabled, or retired wage-earners is designed to ameliorate the economic and social impact on the family normally entailed by the loss of the wage-earner's income. This core rationale for providing secondary benefits to the wage-earner's family does not apply to divorced wives, whose economic, legal, and social relationship with their former husbands is pervasively changed by the divorce. Whereas wives are likely to be dependent for support on their husbands, most divorced wives receive no support from their former spouses. The economic need of these divorced wives is therefore unaffected by the wage-earner's disability or retirement. Since Social Security is essentially an income replacement system, it was reasonable for Congress to provide benefits to wives on the occasion of the wage-earner's retirement or disability, and not to provide such benefits to divorced wives, whose economic fortunes usually have been severed by the divorce from those of the wage-earner.

Congress has determined it is appropriate to provide secondary benefits to certain surviving divorced wives and elderly divorced wives. Although these categories of individuals fall outside the core rationale for providing secondary benefits, Congress has evidenced a special concern for them. Congress historically has recognized the problems associated with widowhood, and it reasonably could perceive that surviving divorced wives are embraced by that rationale. Moreover, in extending coverage to elderly divorced wives, Congress has sought to provide what is, in essence, a retirement benefit to a group of individuals who are not eligible for old-age insurance on their own account because of their long years as a homemaker. But neither special rationale for providing benefits to these classes of divorced wives extends to the class of divorced wives represented by appellee.

ARGUMENT

CONGRESS IS NOT CONSTITUTIONALLY REQUIRED TO MAKE WIFE'S INSURANCE BENEFITS AVAILABLE TO THE UNREMARRIED DIVORCED WIFE OF A RETIRED OR DISABLED WAGE-EARNER ON THE SAME BASIS AS IF SHE HAD REMAINED MARRIED TO THE WAGE-EARNER

INTRODUCTION

Payment of benefits under Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, is based upon the wage-earner's record of earnings in employment or self-employment covered by the Act. Old-age and disability insurance benefits (primary benefits) are payable to the wage-earner, and several other categories of benefits (secondary benefits) are payable to other individuals on the basis of their relationship to the wage-earner. See *Flemming* v. *Nestor,* 363 U.S. 603, 608. Secondary benefits at present are payable under specified conditions to the wife or divorced wife, child, widow or surviving divorced wife, and parent of a retired, deceased, or disabled male wage-earner. See Sections 202(b), (d), (e), (g), and (h) of the Act, 42 U.S.C. (and Supp. IV) 402(b), (d), (e), (g), and (h). The issue presented by this case is whether Congress violated the principle of equal protection inherent in the Due Process Clause of the Fifth Amendment by granting secondary insurance benefits to wives under age 62 who have an entitled child in their care while denying such benefits to otherwise similarly situated divorced wives. Underlying this narrow issue is the broader question of the extent of Congress' power to choose among competing claimants for scarce social welfare funds.

The Social Security Act "was designed to function into the indefinite future, and its specific provisions rest on predictions as to expected economic conditions which must inevitably prove less than wholly accurate, and on judgments and preferences as to the proper allocation of the Nation's resources which evolving economic and social conditions will of necessity in some degree modify." *Flemming* v. *Nestor,*

supra, 363 U.S. at 610. No fixed system of social insurance would be adequate to meet the demands of ever changing social conditions; amendments and modifications must be made from time to time to readjust the system in light of new conditions and reordered priorities. At the same time, the practical realities of the legislative process foreclose a comprehensive revision of the Act each time an additional category of potential beneficiaries is identified as deserving of assistance. Congress is constrained to act in piecemeal fashion.

This Court has in the past evinced an understanding of and sympathy for the step-by-step legislative process that gives shape and content to an evolving social welfare scheme, by acknowledging that a legislature is constitutionally empowered to deal with a problem "one step at a time" and to "select one phase of one field and apply a remedy there, neglecting the others." *Jefferson* v. *Hackney,* 406 U.S. 535, 546; *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 489.[5] This approach properly recognizes that the Constitution is a practical instrument of government and that Congress must be allowed flexibility in fashioning a system of social insurance designed to allocate necessarily limited fiscal resources for the relief of competing, diverse, and changing social needs.

[5] The district court below found this approach inapposite on the ground that "[t]he difference between classifications involving regulation of businesses and those affecting human needs is obvious" (J.S. App. A, p. 12a). In so ruling, the district court acted in contradiction to this Court's explicit teaching, in *Weinberger* v. *Salfi*, 422 U.S. 749, 774, that: "If the Fifth and Fourteenth Amendments permit this latitude to legislative decisions regulating the private sector of the economy, they surely allow no less latitude in prescribing the conditions upon which funds shall be dispensed from the public treasury." See also *Geduldig* v. *Aiello*, 417 U.S. 484, 495; *Dandridge* v. *Williams*, 397 U.S. 471, 486–487.

The importance of such flexibility is especially apparent with regard to the allocation of secondary social insurance benefits, *i.e.,* benefits paid to an individual other than the wage-earner on the basis of that individual's relationship to the wage-earner. As the nation has developed economically, and as prevailing views have shifted with respect to the extent of the government's responsibility for the individual's economic well-being, Congress has gradually but steadily added to the categories of eligible beneficiaries. In thus responding to changing social conditions by enlarging the coverage of the Social Security Act, Congress has acted in the time-honored tradition of legislative reform by moving one step at a time to address "the phase of the problem which seems most acute to the legislative mind." *Williamson* v. *Lee Optical Co., supra,* 348 U.S. at 489.

In particular, the present statutory provisions governing the payment of secondary benefits to the wives and divorced wives of covered wage-earners are the product of a series of separate legislative decisions made over the life of the Social Security Act. When the Social Security Act was first enacted, neither wives nor divorced wives were eligible for secondary benefits. 49 Stat. 622. As we demonstrate below, each

subsequent legislative decision to extend secondary benefits to a previously unprotected category of wives or divorced wives had a rationale that did not embrace the particular category of divorced wives represented by appellee. Accordingly, the denial of such benefits to that category of divorced wives is rational, whether or not any single overarching rationale fully explains the relations of all the resulting statutory classifications to one another. The lines presently drawn represent the " 'rough accommodation' " required by " '[t]he problems of government.' " *Dandridge* v. *Williams,* 397 U.S. 471, 485.

In a case such as this, due process demands no more. The district court correctly determined (J.S. App. A, pp. 3a–7a), and appellee now apparently concedes (Mot. to Aff. 5–6), that since the classification challenged here is not "suspect" and does not bear upon a fundamental constitutional interest, "[i]f the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment." *Richardson* v. *Belcher,* 404 U.S. 78, 84. As this Court reaffirmed in *Weinberger* v. *Salfi,* 422 U.S. 749, 768, ordinary social welfare classifications, such as the one challenged here, satisfy the requirements of equal protection and due process unless " 'the statute * * * [is] utterly lacking in rational justification.' " The statutory classification at issue here is constitutional under that test.

A. THE RATIONALE UNDERLYING CONGRESS' EXTENSIONS OF SECONDARY INSURANCE BENEFITS TO WIVES DOES NOT EQUALLY EMBRACE DIVORCED WIVES

1. Benefits have been extended to wives in order to ameliorate the impact on the family unit of the retirement, disability, or death of the wage-earner

As originally enacted in 1935, the Social Security Act provided only for the payment of primary benefits to the elderly, retired wage-earner. 49 Stat. 622. In 1939, however, Congress established secondary insurance benefits as a means of providing additional protection to the wage-earner and his immediate family. The principal purpose of the 1939 amendments was "to afford more adequate protection to the family as a unit." H.R. Rep. No. 728, 76th Cong., 1st Sess. 7; S. Rep. No. 734, 76th Cong., 1st Sess. 7. Accordingly, secondary benefits were made available, under specified conditions, to members of the wage-earner's family—wives, children, widows, orphans, and surviving dependent parents—on the basis of the wage-earner's Social Security account. 53 Stat. 1363–1366.

The restriction of eligibility for secondary benefits to members of the family was consistent with the governing principle that "[u]nder a social-insurance plan the primary purpose is to pay benefits in accordance with the probable needs of the beneficiaries * * *." H.R. Rep. No. 728, *supra,* at 7. Congress acted on the reasonable premises that the members of a wage-earner's family are more likely than individuals outside the family circle to be dependent on his income for their economic well-being and that it was the family as a unit, and the members of that

family, that suffered most from a reduction in family income. Secondary insurance benefits were therefore extended to such individuals in order to ameliorate the impact on the family of the loss of or reduction in income that occurs upon the death or retirement of the wage-earner. Cf. *Weinberger* v. *Wiesenfeld*, 420 U.S. 636, 644. Since individuals outside the family unit were less likely to be dependent upon the wage-earner, and therefore less likely to experience a direct reduction in economic well-being upon his death or retirement, and because administrative and program costs would be significantly increased by attempting to cover actual dependents outside the family unit, the benefits were restricted to family members. See Final Report of the Advisory Council on Social Security 15 (1938) (the "1938 Report"). Moreover, Congress was aware that making benefits available to family members would conduce to the wage-earner's own economic well-being during his lifetime; the same result would not necessarily follow from extending benefits to individuals outside the family.

Thus, the 1939 amendments granted secondary benefits to the wife of a retired wage-earner when she reached 65 years of age. Section 201 of the Social Security Act Amendments of 1939, 53 Stat. 1364, as amended, 42 U.S.C. (and Supp. IV) 402(b). Congress recognized that the retired wage-earner's primary benefit alone was likely to be insufficient to support the family unit, because "the probable need of a married couple is greater than that of a single individual."

H.R. Rep. No. 728, *supra*, at 11. Congress therefore determined that payment of secondary benefits to wives who were not entitled to substantial benefits on the basis of their own earnings[6] was an appropriate means of supplementing family income.

The 1939 amendments also provided for the payment of secondary benefits to widows, orphans, and dependent children of deceased wage-earners. 53 Stat. 1364–1366. Specifically, a widow became entitled to survivor's benefits at age 65, or regardless of age if she had in her care a child of the wage-earner who was entitled to benefits on the basis of the wage-earner's Social Security account. 53 Stat. 1365, as amended, 42 U.S.C. (and Supp. IV) 202(e) and (g).[7]

In providing for survivor's benefits, Congress recognized that the death of the wage-earner has a substantial impact on the economic security of his family. See H.R. Rep. No. 728, *supra*, at 7; 1938 Report, *supra*, at 16–18; Report of the Committee on Economic Security, H.R. Doc. No. 110, 76th Cong., 1st Sess. 7–8 (1939). The death of the wage-earner often would leave the aged widow, who was unlikely to have sufficient work credit to

[6] A wife of retirement age who was entitled to receive a primary insurance benefit equal to or greater than one-half of the primary insurance benefit of her husband was made ineligible to receive wife's insurance benefits. 53 Stat. 1364.

[7] The benefit provision for a widow under retirement age with an entitled child in her care was entitled "Widow's Current Insurance Benefits." 53 Stat. 1365. In 1950, this subsection was transferred to Section 202(g) of the Act and retitled "Mother's Insurance Benefits." 64 Stat. 485–486.

receive substantial old-age insurance benefits on the basis of her own Social Security account, without sufficient financial support in her declining years. Congress presumably deemed it unlikely that such women could, and undesirable that they should be required to, join or return to the work force at an advanced age. See also pp. 16–23 of the government's brief in *Mathews* v. *Goldfarb,* No. 75–699, probable jurisdiction noted February 23, 1976.[8] Moreover, by assuring that the wage-earner's widow would be provided support after the wage-earner's death, Congress reduced the pressure that the wage-earner and his family would otherwise be under to attempt to make provision for the future out of his own earnings or limited primary benefits during his lifetime. Thus the provision of survivor's benefits for widows operated to enhance the well-being of the wage-earner as well.

The benefits program for widows (regardless of age) with entitled children in their care had a similar remedial purpose. Congress intended to prevent such widows from being forced into the job market by giving them the option of remaining at home to care for the dependent child. 1938 Report, *supra,* at 18, 31; see *Weinberger* v. *Wiesenfeld, supra,* 420 U.S. 648–650.

The eligibility provisions for wives and widows remained unchanged from 1939 until 1950. In the latter year, Congress extended secondary benefits to the wives of wage-earners entitled to old-age benefits who

[8] A copy of the government's brief in *Goldfarb* is being furnished to appellee's counsel.

had entitled children in their care; such benefits were made payable regardless of age. Section 101(a) of the Social Security Act Amendments of 1950, 64 Stat. 483, as amended, 42 U.S.C. (and Supp. IV) 402(b). In enacting this provision, Congress extended to wives of retired wage-earners the same protection that had been afforded in 1939 to widows. Congress' purpose in extending such benefits to wives, however, was not, as it was in the case of widows with entitled children in their care, "to provide children deprived of one parent with the opportunity for the personal attention of the other * * *." *Weinberger* v. *Wiesenfeld, supra,* 420 U.S. at 648–649. The wage-earner's retirement, unlike his death, does not confront the wife with the choice of foregoing income or leaving the child unattended; the wage-earner himself would be able to care for the child if his wife takes a job. But such a forced alteration in the parents' normal roles could be anticipated to be disruptive. By providing supplementary benefits that would enable a mother to maintain her normal role in the family, Congress reduced the need for such a readjustment in the family situation late in the wage-earner's life.

In 1958, Congress further broadened the protection afforded families by providing benefits to the dependents of disabled wage-earners, including wives with entitled children in their care. Section 205(b)(1) of the Social Security Amendments of 1958, 72 Stat. 1021–1023, as amended, 42 U.S.C. (and Supp. IV) 402(b), (c), (d), (e), (f), and (g). The children of a disabled wage-earner are normally younger than

those of a wage-earner who retires, and thus the desirability of permitting the mother to maintain her normal role in the family is correspondingly greater, especially since the disabled husband may be unable to care for the children himself. See H.R. Rep. No. 2288, 85th Cong., 2d Sess. 12–13 (1958). Congress further believed that the wife often would be needed at home to care for her disabled husband (*id.* at 13):

> It is reasonable to assume, also, that in a great many cases the care which the disabled person requires makes it difficult, if not impossible, for his wife to increase the family income by working.

2. It was rational for Congress to treat divorced wives, who are no longer members of the wage-earner's immediate family, differently from wives

Although some secondary benefits have now been extended to divorced wives (see pp. 24–27, *infra*), Congress consistently has distinguished between wives and divorced wives in the Social Security Act and provided somewhat differently for them. In the statutory provision at issue in this case, Congress has granted to wives with entitled children in their care, and denied to similarly situated divorced wives, the right, without regard to age, to receive secondary benefits when the wage-earner becomes entitled to old-age or disability insurance benefits. As we now show, Congress acted rationally both in distinguishing generally between wives and divorced wives and in establishing the particular classification challenged here.

a. Divorce works fundamental and pervasive changes in the emotional, social, legal and economic

relationships between former spouses.[9] It causes a disintegration of the "family as a unit" that secondary benefits were principally designed to protect. The distinctions drawn by Congress between wives and divorced wives realistically reflect those facts.

Secondary benefits are paid to categories of individuals defined on the basis of probable need arising out of the termination of the wage-earner's employment; they are designed in large part to replace the support lost by dependents as a consequence of the death, disability, or retirement of the wage-earner. In assessing the existence of such need, and in allocating benefits on the basis of that assessment, Congress is entitled to make distinctions based upon the relative likelihood of dependency. *Mathews* v. *Lucas*, No. 75–88, decided June 29, 1976. Congress correctly determined that wives are substantially more likely than divorced wives to be dependent upon the wage-earner for economic support and thereby to suffer from the reduction in the wage-earner's income.

A sizable majority of married women are dependent upon their husbands for economic support. In 1950, less than one-fourth of all married women in the United States were gainfully employed. *Bureau of the Census, A Statistical Portrait of Women in the U.S.*, table 7–4 (1976). Even now, less than one-half of married women hold jobs. *Ibid.* Those who do work contribute, on the average, only approximately one-fourth of the family income. *Id.* at table 10–10. Ac-

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[9] Section 216(d)(4) of the Act, 42 U.S.C. 416(d)(4), defines divorce as "divorce a vinculo matrimonii," *i.e.*, divorce that works a complete dissolution of the marriage relationship.

cordingly, Congress rationally concluded that a wife, whether or not employed, would be likely to experience a loss of support upon the termination of her husband's employment.

In contrast, few divorced women receive support from their former husbands. The National Commission on the Observance of International Women's Year has reported that "[a] September 1975 survey [of American women] conducted for the Commission * * * revealed that only 14 percent of divorced women were awarded alimony and of this 14 percent only 46 percent [*i.e.*, about 6.5 percent of all divorced women] were collecting regularly." ". . . . *To Form a More Perfect Union . . .*", Report of the National Commission on the Observance of International Women's Year 16 (1976). A much earlier study conducted by the Bureau of the Census similarly concluded that only 14.7 percent of divorced women had been granted alimony. *Bureau of the Census, Marriage and Divorce* 30 (1925).[10]

Congress could therefore reasonably conclude that divorced wives, as a class, were considerably less likely than wives to be affected by termination of the wage-earner's employment due to death, disability, or retirement. Indeed, where, as here and as in the great majority of cases, the divorced wife has not been granted

[10] We are not aware of any other comprehensive studies on the subject. The National Commission has called for governmental collection of data on divorce, alimony, and related matters. *Report*, *supra*, at 233–235.

alimony, she is likely to be wholly unaffected economically by her former husband's exit from the job market. Like many other individuals not covered by a Social Security benefit program, such a divorced wife may be needy, but her need is unrelated to the termination of the wage-earner's employment. Moreover, payment of benefits to her, unlike payments to wives and widows, would not directly or indirectly assist the wage-earner, from whose economic fortunes she has been severed.[11] Accordingly, Congress had a rational basis for distinguishing between wives and divorced wives for the purpose of allocating secondary dependency benefits designed to provide additional protection to the wage-earner and his immediate family.

b. The statutory classification challenged here is supported by the rational basis that underlies the general distinction between wives and divorced wives, and by other considerations as well.

[11] In those relatively few cases in which a support obligation has been imposed under state law, the domestic relations court may or may not deem it appropriate to adjust the obligation upon the former husband's disability or retirement. Thus even as to those divorced wives who receive support, it cannot be said with certainty that they will suffer a loss of support when the wage-earner becomes disabled or retires. In view of the relatively small number of divorced women likely to lose support, Congress could, in order to limit the proliferation of statutory classifications that must be administered under the Social Security Act, rationally treat all otherwise similarly situated divorced women alike. In any event, that treatment in no way disadvantages appellee, who is not entitled to support from, or dependent upon, her former husband.

A wife with an entitled child in her care is very likely to suffer at least some loss of support when her husband becomes disabled or retires. Payment to her of secondary benefits ameliorates that economic loss and, by increasing the family income, assists the wage-earner as well. Payment of similar benefits to a divorced wife with an entitled child in her care would not serve either of these purposes. Where, as in most cases, the divorced wife is not receiving support from her former husband, she suffers no economic loss upon the termination of his employment that requires amelioration. Similarly, since the divorced wife is physically, economically, and legally removed from the wage-earner's immediate family and surroundings, payment of benefits to the divorced wife ordinarily would be of no assistance to the wage-earner whose income has been reduced.

Moreover, the payment of benefits to the wife serves to minimize the extent to which the family's normal routine must be disrupted by the wage-earner's termination of employment: if the wife had remained at home in the past to care for the child, the availability of benefits enables her, if she so desires, to continue her child-care activities without being forced into the job market. This consideration may be especially important in cases of disability, where the disabled wage-earner may not be able to provide child care and, indeed, may be in need of care himself.

In contrast, the disability or retirement of the wage-earner is not likely to have any disruptive effect on the economic or personal life of the divorced wife: she

is not thereby forced out into the job market to supplement a declining family income,[12] nor is there a heightened need for her to remain at home because of the presence there of the disabled or elderly wage-earner. In this case, for example, Mr. de Castro's retirement had no impact whatsoever upon appellee's economic or personal life. It therefore provided no occasion for an increase in the amount of Social Security benefits already paid for the support of her family.[13]

These differences in the circumstances of wives and divorced wives amply justify the line Congress has drawn between them in allocating secondary benefits.

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[12] There may be a small percentage of divorced women with entitled children in their care whose alimony is reduced at the time their former husbands become disabled or retire and who therefore might seek employment at that point. See note 11, *supra*. But the postponement of their secondary benefits until they reach age 62 simply places them in a position similar to, but somewhat better than, that of dependent parents, who receive secondary benefits only at the death of the wage-earner, not at the time of his disability or retirement, and then only when they have reached age 62. Section 202(h) of the Act, 42 U.S.C. 402(h). The comparison of divorced wives with dependent parents seems more apt than that with wives. Members of the immediate family—wives and minor children—are within the core rationale of affording "more adequate protection for the family as a unit." H.R. Rep. No. 728, *supra*, at 7. Other relatives, such as dependent parents and divorced wives, are outside that core rationale and for that reason have been granted somewhat less comprehensive benefits.

[13] By definition, appellee's family (consisting of herself and her daughter) and those of other divorced women with entitled children in their care already receive Social Security benefits on account of the children. See Section 202(d) of the Act, 42 U.S.C. (Supp. IV) 402(d).

B. THE RATIONALES UNDERLYING CONGRESS' EXTENSIONS OF SECONDARY INSURANCE BENEFITS TO CERTAIN OTHER DIVORCED WIVES DOES NOT SUPPORT THE GRANT OF BENEFITS TO YOUNGER DIVORCED WIVES WITH ENTITLED CHILDREN IN THEIR CARE

Over time, Congress has extended secondary insurance benefits to certain categories of divorced wives. As a result of a series of amendments to the Social Security Act, surviving divorced wives[14] are now treated in the same manner as widows. See Section 202(e) and (g) of the Act, 42 U.S.C. (and Supp. IV) 402(e) and (g).[15] This comparability of treatment furthers evident humanitarian purposes. In originally establishing widow's benefits, Congress recognized that widows as a class are among the neediest individuals in our society. See H.R. Rep. No. 728, *supra,* at 11. As has been recently observed (Women and Social Security: Adapting to a New Era, a Working Paper prepared by the Task Force on Women and Social

[14] The Act defines "surviving divorced wife" as "a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 20 years immediately before the date the divorce became effective." Section 216(d)(2) of the Act, 42 U.S.C. 416(d)(2).

[15] Mother's benefits were granted to dependent surviving divorced wives in 1950. Sections 101(a) and 104(a) of the Social Security Act Amendments of 1950, 64 Stat. 485–486, 511. The dependency requirement was eliminated in 1972. Section 114 of the Social Security Amendments of 1972, 86 Stat. 1348. In 1965, surviving divorced wives were granted widow's insurance benefits. Section 308(a) of the Social Security Amendments of 1965, 79 Stat. 375. Mother's benefits, unlike wife's and widow's benefits, are made available to divorced women without regard to the length of their marriages to the wage-earner. See Section 216(d)(3) of the Act.

Security for the Senate Special Committee on Aging, 94th Cong., 1st Sess. 42 (1975)):

> As a group, aged widows have traditionally been the most economically deprived of the segments of the aged population. Older women living alone, the overwhelming proportion of whom are widows, had median incomes of $2,642 in 1973 when 33.4 percent of them lived below the poverty level.

Congress reasonably concluded that the economic circumstances of surviving divorced wives were likely to be no better than those of widows and that the payment to them of secondary benefits would succor members of a group "whose probable need is greatest." H.R. Rep. No. 728, *supra,* at 11. That conclusion did not equally apply to divorced women, such as appellee, whose husbands are still living. Such women are, on the average, younger than widows, and therefore more likely to be able to obtain gainful employment. Moreover, the death of the wage-earner, unlike his disability or retirement, ordinarily would definitively terminate any possibility that the divorced wife might otherwise have had of receiving support from her former husband. Cf. Annotation, 39 A.L.R. 2d 1406, 1408–1411 (1955).

In 1965, Congress acted to meet the needs of older divorced women by granting them benefits, at or after age 62, when their former husbands became entitled to old-age or disability benefits. Congress recognized that it was "not uncommon for a marriage to end in divorce

after many years when the wife is too old to build up a substantial social security earnings record even if she can find a job." H.R. Rep. No. 213, 89th Cong., 1st Sess. 93 (1965). To remedy this specific situation, Congress amended Section 202(b) of the Act to allow those older divorced women, most of whom would not otherwise have been eligible for any Social Security benefits,[16] to receive wife's benefits upon reaching retirement age. Section 308(a) of the Social Security Amendment of 1965, 79 Stat. 375, as amended, 42 U.S.C. (and Supp. IV) 402(b) and (e), 416(d).[17]

This provision is reasonable in light of Congress' concern for those older women who, because they accepted the role as homemaker for much of their adult life, have not built up an earnings record sufficient to establish entitlement to old-age benefits. Congress believed it was appropriate to provide such women with what is, in essence, a retirement benefit, as a substitute for the normal primary insurance benefit a divorced wife might have obtained on her own account had she not been married.

This concern for the security of older divorced wives, of course, does not apply to divorced wives of

[16] If a divorced woman is entitled to old-age or disability benefits as a primary beneficiary in an amount that is one-half or more of the primary insurance amount of her former spouse, she is not entitled to wife's benefits. Section 202(b)(1)(D) of the Act, 42 U.S.C. (Supp. IV) 402(b)(1)(D); see note 2, *supra*.

[17] As with divorced widows with an entitled child in their care, Congress in 1972 eliminated the dependency requirement. See note 15, *supra*.

less than retirement age. It was reasonable for Congress to conclude that such younger divorced wives, such as appellee, have a better chance of obtaining work and thereby establishing eligibility for old-age benefits of their own.[18] They may also be more likely to remarry and have their economic needs taken care of by their new spouse. Thus, the current legislative distinction between younger and older divorced wives also is rational.

* * * * *

As can be seen, the history of the wife's and widow's benefits provisions is one of steadily expanding coverage. Each expansion of coverage has been responsive to specific and newly felt social needs. Younger divorced wives with entitled children in their care have simply not yet been identified by Congress as sufficiently in need to require special assistance.

We have been unable to find any instance in which Congress has considered and rejected a proposal to extend benefits to younger divorced wives in appellee's position. The legislative history therefore does not state the reasons such women have not been granted benefits. It is possible that there has been no specific, affirmative congressional reason for the denial of benefits: benefits have been "denied" in the past because

[18] Of course, if the divorced wife does not establish eligibility for primary insurance in an amount equal to or greater than one-half the primary insurance amount of her former spouse, she becomes eligible for wife's benefits at age 62. See pp. 25–26, *supra*. Appellee will be 62 in February 1977 (see App. 2).

Congress has been able to respond adequately to the most acute or visible situations of need in ways that did not entail the extension of benefits to appellee and her class.

It may be characteristic of cases such as this—where the issue is whether Congress, having extended benefits so far, has extended them far enough—that the legislative history will be silent as to why the benefits were not further extended to one or more other possible classes of beneficiaries. Indeed, in some instances the legislative history affords little or no explanation of why benefits were extended to a particular category of beneficiaries. Of necessity, therefore, the appropriate inquiry in such cases is whether grounds that may reasonably be considered to have been within the contemplation of Congress supported the extension of benefits to one group or groups but not to another. Since, as we have shown, grounds exist for the extension of benefits to wives and certain divorced wives that do not support a similar extension of benefits to younger divorced wives with entitled children in their care, Congress' failure to extend benefits to the latter class does not violate the requirements of due process.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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In the Supreme Court of the United States

OCTOBER TERM, 1976

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant,

vs.

HELEN DE CASTRO,

Appellee.

On Appeal From The United States District Court
For The Northern District of Illinois

BRIEF FOR APPELLEE

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INDEX

PAGE

Opinion below 1

Jurisdiction 1

Statute involved 2

Question presented 2

Statement 2

Argument:

42 U.S.C. §402(b)(1)(B) invidiously discriminates against divorced wives and their children in violation of the Fifth Amendment 5

A. The purpose behind the child in care provisions of §402(b)(1)(B) is to facilitate parental care for dependent children 6

B. The different treatment accorded married and divorced wives by §402(b)(1)(B) lacks a rational basis 8

C. The classification created by §402(b)(1)(B), based on the marital status of the wife, is not rationally related to the achievement of the Congressional goal 14

Conclusion 16

CITATIONS

Cases

	PAGE
Eisenstadt v. Baird, 405 U.S. 438	14, 15
F. S. Royster Guano Co. v. Virginia, 253 U.S. 412	6, 10
Glona v. American Guarantee & Liability Insurance Co., 391 U.S. 73	14, 15
Moritz v. Commissioner of Internal Revenue, 469 F. 2d 466 (10th Cir. 1972), *cert. denied,* 412 U.S. 906	15
Reed v. Reed, 404 U.S. 71	6
Richardson v. Belcher, 404 U.S. 78	5
Stanley v. Illinois, 405 U.S. 645	15
Weinberger v. Salfi, 422 U.S. 749	5
Weinberger v. Wiesenfeld, 420 U.S. 636	7

Constitution and Statutes

United States Constitution:	
Fifth Amendment	2, 7, 12
Fourteenth Amendment	15
5 U.S.C. §7152	14
5 U.S.C. §7154	14
42 U.S.C. §402(b)(1)	2, 3, 5
42 U.S.C. §402(b)(1)(B)	*passim*
42 U.S.C. §402(g)	7, 8
42 U.S.C. §416(d)	4, 8

In the Supreme Court of the United States

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F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

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Appellee.

On Appeal From The United States District Court
For The Northern District of Illinois

BRIEF FOR APPELLEE

Opinion Below

The opinion of the District Court (J.S. App. A, pp. 1a-18a) is reported at 403 F.Supp. 23 (1975).

Jurisdiction

The jurisdiction of this Court is conferred by 28 U.S.C. §1252.

Statute Involved

The pertinent portions of 42 U.S.C. §402(b)(1) are set out at J.S. App. D, pp. 23a-25a.

Question Presented

Whether Section 202(b)(1)(B) of the Social Security Act (42 U.S.C. §402(b)(1)(B)), which grants social security benefits to a wife with a dependent child in her care, but denies such benefits to a divorced wife with a dependent child in her care, invidiously discriminates against divorced wives in violation of the Fifth Amendment.

Statement

This action was commenced on July 1, 1974 to review a final decision of the Secretary of Health, Education and Welfare denying appellee's application for wife's insurance benefits.

Appellee, who was born on February 18, 1915, has not attained age 62. She and the wage-earner, Albert de Castro, were validly married on September 9, 1946, and were divorced on February 8, 1968, after more than 20 years of marriage. (App. 32). Two children were born of the marriage, namely, Rosemary de Castro and Catherine de Castro. Catherine de Castro, a mentally disabled child entitled to child's insurance benefits, requires continuous custodial care and supervision. (App. 59). She has been in appellee's care at all relevant times, and particularly since December 5, 1966, when Albert de Castro deserted appellee and his family and returned to the Philippine Islands where he has since remained. (App. 32). For a time thereafter, appellee was fortunate to have had the assistance of her mother in caring for Catherine while appellee worked.

Since her mother's death, however, appellee has had to forego work and devote her full time to the care of Catherine. (App. 19). Appellee is not married and is not entitled to old age or disability insurance benefits. (App. 32-33).

On September 23, 1971, appellee filed an application under § 402(b)(1) for wife's insurance benefits on the account of Albert de Castro as the divorced wife of a wage-earner having in her care a child entitled to a child's insurance benefit. (App. 51-54). Section 402(b)(1) provides in part:

> The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—
>
> (A) has filed application for wife's insurance benefits,
>
> (B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,
>
> • • •
>
> shall (subject to subsection(s) of this section) be entitled to a wife's insurance benefit. . . .

Her application was initially denied. (App. 55, 57-58). After a hearing before an Administrative Law Judge, it was determined that appellee was entitled to a wife's insurance benefit effective January 1, 1973. (App. 13-33). Thereafter, the Appeals Council, on its own motion, reviewed and reversed that decision, concluding that only married but

not divorced wives under age 62 with dependent children in their care were entitled to benefits under Section 402(b)(1)(B). (App. 9-13). Appellee then sought judicial review of the denial of her application for wife's insurance benefits. (App. 1-4). In a unanimous decision rendered September 30, 1975, a three-judge District Court declared §402(b)(1)(B) unconstitutional insofar as it discriminates against divorced wives as defined by §416(d), and enjoined appellant from applying the statute in a manner that denied appellee wife's insurance benefits. (J.S. App. A, p. 18a). It is from that final judgment that this appeal is taken. (J.S. App. C, pp. 21a-22a).

Argument

42 U.S.C. §402(b)(1)(B) INVIDIOUSLY DISCRIMINATES AGAINST DIVORCED WIVES AND THEIR CHILDREN IN VIOLATION OF THE FIFTH AMENDMENT.

Under Section 202(b)(1) of the Social Security Act (42 U.S.C. §402(b)(1)), wives, whether married to or divorced from their wage-earner husbands are entitled to social security benefits upon reaching retirement age (62). In addition, Section 402(b)(1)(B) provides benefits to wives, but not divorced wives, with children in their care, regardless of age. This disparity in treatment between wives and divorced wives with respect to the "child in care" benefits was found to be constitutionally impermissible by the three-judge District Court below. For the reasons which follow, the District Court's judgment should be affirmed.

The standard for determining whether a statutory classification is constitutionally sound is whether the classification is rationally based and free from invidious discrimination. *Richardson* v. *Belcher,* 404 U.S. 78 (1971). Under this test, Congressional legislation does not offend the Constitution if the goals to be accomplished are legitimate and the classification adopted is rationally related to the achievement of those goals. As this Court has repeatedly recognized, Congress may not invidiously discriminate among claimants on the basis of criteria wholly unrelated to the object of the legislation. *Weinberger* v. *Salfi,* 422 U.S. 749, 772 (1975). To survive constitutional review, a statutory classification, at a minimum, must be "reasonable, not arbitrary, and must rest upon some ground of dif-

ference having a fair and substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Reed* v. *Reed,* 404 U.S. 71, 76 (1971), quoting from *F.S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920). What then is the object of the child in care provisions of §402(b), and how is that objective served by the exclusion of divorced wives from the statute's coverage?

A. The purpose behind the child in care provisions of §402(b)(1)(B) is to facilitate parental care for dependent children.

Unfortunately, the legislative history of the wife's benefit provisions is of little value in determining the Congressional goal. After an extensive review of three authoritative sources, (App. 23-28), Administrative Law Judge John F. Loehr concluded that:

> "... the House gave scant attention to Section 308(b)(1)(B) [of the Social Security Amendments of 1965, 79 Stat. 375], insofar as the age 62 requirement was concerned; that its main concern was to liberalize the statute and place a wife divorced after 20 years of marriage on a plane with a current wife; and that it did not consider in any way the situation of a divorced wife under age 62 with a child in her care." (App. 25)

However deficient the legislative history may be, the purpose of the legislation nevertheless can be discerned not only from the statutory scheme itself, but as well from comparable provisions in a related section of the Social Security Act. It is apparent, for instance, that Congress' concern in enacting §402(b)(1)(B) was not merely for the wives of wage-earners, but for their children as well. If Congress were concerned solely with providing benefits for wives, there would be no need to limit such benefits to

wives with dependent children. Evidently, Congress was concerned not with the problems of wives alone, but with the care of and responsibility for their children. Thus, benefits are extended to wives and divorced wives upon attainment of age 62. And for the protection of the children, Congress went further and extended benefits to wives, regardless of age, with children in their care. Women without children obtain no benefits until they reach retirement age. 42 U.S.C. §402(b)(1)(B). The extension of benefits to those upon whom the responsibility for raising the children is typically placed evidences a Congressional purpose to enable such women to remain at home and devote themselves to the care of the children. To condition eligibility for social insurance benefits upon the presence of children in the recipient's care cannot rationally be explained, unless the protection of the children is the statute's primary function.

That the purpose behind §402(b)(1)(B) is to provide children with the opportunity for the full-time care and attention of their parents seems to be confirmed by a comparison of the child in care provisions of §402(g). Like §402(b)(1)(B), §402(g) provides benefits to surviving parents who have in their care children of deceased covered employees. As originally enacted, §402(g) benefits were limited solely to surviving widows and divorced spouses of a male insured individual; no benefits were paid to a female wage-earner's surviving spouse. In *Weinberger* v. *Wiesenfeld,* 420 U.S. 636 (1975), this Court held that the exclusion of surviving fathers from benefits under 42 U.S.C. §402(g) violated equal protection concepts implicit in the Due Process Clause of the Fifth Amendment. In reaching that conclusion, the Court found that "Congress' purpose in providing benefits to young widows with chil-

dren was not to provide an income to women who were, because of economic discrimination, unable to provide for themselves. Rather, §402(g), linked as it is directly to responsibility for minor children, was intended to permit women to elect not to work and to devote themselves to the care of children." *Weinberger* v. *Wiesenfeld,* 420 U.S. at 648. Similarly, the decision to grant benefits under §402 (b)(1)(B) to wives with children is explicable only because Congress was concerned with the principle that children of covered employees are entitled to the nurturing care and attention of their mothers, if that parent chooses not to work.

B. The different treatment accorded married and divorced wives by §402(b)(1)(B) lacks a rational basis.

Given the purpose of enabling mothers to remain at home to care for their children, it is clear that the classification created by §402(b)(1)(B) bears no reasonable relation to the achievement of the Congressional goal. Under §402(b)(1)(B), a wife not yet age 62 who has a dependent child in her care is entitled to social security benefits, while a divorced wife, not yet 62, is not entitled to such benefits even though she also has a dependent child in her care, all other conditions being equal. The effect of §402(b)(1)(B) is to create two classes of needy women indistinguishable from each other, with the exception that the one is composed of women not divorced from their wage-earner husbands, and the second of women who have secured divorces after at least twenty years of marriage.[1]

[1] Section 216(d) of the Social Security Act, as amended, 42 U.S.C. §416(d), defines a divorced wife as a "woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective."

On the basis of this sole difference, the first class is granted and the second class is denied social security benefits. Similarly situated wives are, thus, accorded different treatment on the basis of their marital status, a criterion that is wholly unrelated and in fact irrelevant to the statutory purpose of providing benefits to wives who care for children. As the court below pointed out:

> "Since no rational relationship exists between the statutory purpose of providing benefits for wives who care for children . . . and the statutory distinction which permits only married wives under the age of 62 years to receive such benefits, the distinction created by the statute is clearly invidious." 403 F. Supp. at 30.

Plainly, the child supplies the raison d'etre for that portion of 42 U.S.C. §402(b)(1)(B) which grants benefits to wives with children. The benefit afforded is inextricably bound to parental care for minor and disabled children. No benefit exists for the young wife absent a child of the insured individual in her care. It is the care of the minor and disabled child which gives rise to the need for benefits. That need exists regardless of whether the child's mother is married, separated or divorced. The need of children of divorced wives for parental care and supervision is no less than that of children of married wives. The children of divorced wives deserve the same degree of maintenance and support, care and attention as is accorded the children of other wives. The need for benefits in each case is the same, and should be satisfied for all regardless of the mother's marital state. To withhold benefits from wives divorced after more than 20 years of marriage who are caring for dependent children born of the marriage, while granting them to other wives, is to invidiously discriminate against divorced wives and their children without any rational basis for so doing.

The sheer irrationality and inequality of §402(b)(1)(B) becomes manifest when one considers the consequences that follow in its wake. Thus, a child whose parents are married may receive his mother's care, but the child of divorced parents must get along without such care. Children of wives separated but not divorced and children of wives married but less than 20 years are given the advantages and opportunities afforded by their parents' full time care, but not the children of divorced wives. The wife who is separated from her husband receives benefits as does the wife whose marriage, though intact, is of a short duration, but not the divorced wife. A married woman may stay home with her child, but a divorced woman may not stay home with hers. Solely because appellee exercised her legal right to obtain a divorce, she is denied benefits to which she would otherwise be entitled, benefits that would permit her to stay at home and attend personally to the care of her disabled daughter, a child whose father deserted both her and her mother. Having recognized a need among young children for maternal care, and having determined to fulfill that need by granting benefits to wives who can provide the necessary care, it is entirely irrational for Congress then to exclude divorced wives from such coverage. The need does not change simply by virtue of the mother's divorce. The restriction of §402(b)(1)(B) child in care benefits to married wives does not "rest upon some ground of difference having a fair and substantial relationship to the object of the legislation". *F.S. Royster Guano Co.* v. *Virginia, supra,* 253 U.S. at 415.

Appellant argues, however, that the exclusion of divorced wives from benefits under §402(b)(1)(B) has a rational basis. He contends that Congress may draw classifications based upon its assessment of the probable needs of individuals, and that the statutory scheme of §402(b)

(1)(B) is consistent with the purpose of allocating benefits to those with the greatest need. Appellant asserts that Congress "correctly determined that wives are substantially more likely than divorced wives to be dependent upon the wage-earner for economic support," (App. Br. 19) and thus more likely to suffer economically upon termination of the wage-earner's employment. The argument is premised on misleading statistics and appellant's questionable conclusions drawn therefrom. The statistics are that only 14 per cent of divorced women are awarded alimony, from which appellant concludes that "few divorced women receive support from their former husbands." (App. Br. 20). The statistics, however, fail to distinguish between child support and alimony, and fail to indicate the percentage of divorced women who receive and rely upon child support payments from their ex-husbands, payments which are inevitably reduced upon the husband's retirement or disability. There is a direct correlation between a husband's earnings and the amount of child support paid; as the earnings decline so too do the support payments. Like her married counterpart, a divorced wife suffers a financial loss equivalent to that of a wife upon the termination of the wage-earner's employment. Under such circumstances, Congress' assessment of the greater need for benefits among wives as opposed to divorced wives is wholly unwarranted and without foundation in fact or logic. Wives and divorced wives are at least equal so far as financial needs are concerned, and suffer corresponding losses of support when the wage-earner retires or becomes disabled. Likewise, the needs of wives with dependent children are substantially the same as those of divorced wives, and both groups are equally affected by the termination of the wage-earner's employment. In fact, the "disruptive effect" caused by the disability or retirement of the wage earner is, perhaps, most acutely felt by the divorced wife

with dependent children. To supplement reduced support payments, she is forced into the job market without having the assistance of another parent at home to care for the children. In contrast, a wife, if she chooses to enter the job market, at least has the presence of her husband at home to provide such care. As was recognized by the Court below:

> "... There is no rational basis for concluding that a married wife having a dependent child in her care has a greater economic need than a divorced wife caring for such a child. In many cases the reverse will be true." 403 F.Supp. at 28.

Nor is there any rational basis for concluding that the effect of a wage-earner's retirement or disability is more severe for a married wife than a divorced wife. Absent a rational basis for the different treatment accorded married and divorced wives by §402(b)(1)(B), that section violates equal protection guarantees implicit in the Due Process Clause of the Fifth Amendment.

The distinctions appellant urges to justify the disparate treatment of married and divorced wives are more imaginary than real. And while they may lend some credence to his argument that wives and divorced wives are in sufficiently different circumstances so as to deserve different treatment, the distinctions falter when the primary Congressional purpose of the legislation is taken into account. By affording benefits to wives with children in their care, Congress obviously sought to provide adequate care and protection for the children of entitled wage-earners. Although the benefits are paid directly to the wife, the ultimate beneficiaries are the dependent children. The wife receives the benefits not because she is married, but because the benefits provided to her will enable her to remain at home and provide the necessary care for the children. The problem dealt with by the statute here is the needs of dependent children. Within this area of need, no rational justification exists for distinguishing between married and divorced wives whose children have similar needs and who otherwise qualify for benefits.

Appellant argues finally that the legislative decision to expand wives' benefits to divorced women over but not under age 62 constitutes a rational effort to deal with the economic problems of elderly divorced wives. (App. Br. 24-27). That may well be. The discrimination here at issue is not, however, between young and old divorced wives. Nor is it between married and divorced wives without children. Both married and divorced wives, absent children in their care, are treated alike by §402(b)(1)(B). Both must attain age 62 before becoming entitled to social security benefits. Rather the discrimination with which we are concerned is that between young married wives with children and young divorced wives with children. It is that discrimination for which we can find no rational basis. However rational the individual legislative decisions to expand the Act's coverage may have been, the resulting statutory scheme obviously and impermissibly discriminates against divorced wives. The fact that Congress may not have intended the discrimination does not detract from the statute's discriminatory operation and does not alleviate the statute's inequitable effect.

The 1965 Amendment to §402(b) providing old-age benefits to divorced wives who had been married to a wage-earner for at least 20 years prior to divorce underscores the injustice of the current statutory scheme. Congress recognized that women divorced after 20 or more years of marriage are often unable to work and earn social security

benefit protection of their own. Like other wives, they spend a substantial portion of their lives at home caring for the family. Despite their similar contributions to the family and similar needs upon reaching retirement age, divorced wives were excluded from social security benefits. To rectify this discrimination, Section 402(b) was amended and a wife divorced after 20 years or more of marriage was placed on an equal footing with a wife not divorced. Divorced wives, young and old, are now treated on an equal basis with married wives, except when dependent children are in their care. In light of the express Congressional policy to accord equality of treatment to divorced wives, and in light of the congressional concern for dependent children evinced by Section 402(b)(1)(B), the granting of benefits to married wives with children and the withholding of such benefits from similarly situated divorced wives lacks the rationality required by equal protection guarantees.

C. The classification created by §402(b)(1)(B), based on the marital status of the wife, is not rationally related to the achievement of the Congressional goal.

Recent decisions of this and other courts have struck down legislative classifications based on marital status.[2] In *Glona* v. *American Guarantee & Liability Insurance Co.*, 391 U.S. 73 (1968), for example, this Court held that a Louisiana statute that allowed a right of recovery to a mother for the wrongful death of her child, but not to an unwed mother was violative of the constitutional guarantee of equal protection. In *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972), a statutory scheme which allowed distribution

[2] See also 5 U.S.C. §§ 7152 and 7154 (prohibiting discrimination in federal employment because of, inter alia, marital status).

of contraceptives to married individuals, but prohibited such distribution to unmarried persons was found to violate the Equal Protection Clause of the Fourteenth Amendment. Similarly, in *Stanley* v. *Illinois*, 405 U.S. 645 (1972), this Court invalidated a statutory procedure by which children of unwed fathers automatically became wards of the state upon the death of their natural mothers. Under the Illinois law there involved, married fathers, whether divorced, widowed or separated, and mothers, whether married or unwed, could be deprived of their children only after notice, hearing and proof of such unfitness as a parent as amounts to neglect, while unwed fathers were presumed unfit and their children taken from them without any such showing of neglect. Denying a hearing to unwed fathers while granting a hearing to all other Illinois parents was "inescapably contrary to the Equal Protection Clause." *Stanley* v. *Illinois*, 405 U.S. at 658. Finally, in *Moritz* v. *Commissioner of Internal Revenue*, 469 F. 2d 466 (10th Cir. 1972), cert. denied, 412 U.S. 906 (1973), a provision of the Internal Revenue Code (26 U.S.C. § 214(a)) allowing a deduction to women, widowers, divorcees (male or female) and to husbands with institutionalized or incapacitated wives, but denying a like deduction to unmarried men was found to be constitutionally defective.

The statutes involved in *Glona, Eisenstadt, Stanley* and *Moritz* all suffered from the same vice. Rights and benefits were allocated on the basis of an individual's marital status, a criterion which was found to bear no rational relation to the objectives ostensibly sought to be achieved by the legislation. §402(b)(1)(B) similarly mandates differential treatment of identically situated wives, not on the basis of need, but instead on the basis of their marital status, a criterion that bears no relationship whatsoever

to the recognized Congressional goal. If, as we submit, the Congressional objective is to help provide a mother's nurturing care to her dependent child, then the classification created by §402(b)(1)(B)—based as it is on the mother's marital status rather than upon her need or that of the child—is not rationally related to the achievement of that goal. A social insurance benefit, which is designed to facilitate parental care for minor and disabled children, is not constitutionally allocated when it includes children with married mothers, but excludes children with divorced mothers.

Conclusion

While it is true that social security benefits are a matter of legislative grace, that is not to say that Congress can grant them to some and withhold them from others on the basis of irrelevant criteria. Once Congress has determined to grant benefits to wives with dependent children in their care, all wives, whether married or divorced, are constitutionally entitled to them, absent some rational justification for a contrary result. We respectfully submit that §402(b)(1)(B), in denying benefits to Helen de Castro and those like her, while granting benefits to other wives, contravenes the equal protection guarantee implicit in the Fifth Amendment Due Process Clause. Accordingly, the judgment of the District Court should be affirmed.

Respectfully submitted,

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FOR ARGUMENT

Supreme Court, U. S.
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No. 75-1197

In the Supreme Court of the United States

OCTOBER TERM, 1976

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

HELEN DE CASTRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF FOR THE APPELLANT

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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1. The principal burden of appellee's brief is that wives and divorced wives under 62 with dependent children in their care "are * * * accorded different treatment [under Section 202(b) of the Social Security Act] on the basis of their marital status, a criterion that is wholly unrelated and in fact irrelevant to the statutory purpose of providing benefits to wives who care for children" (Br. 9); see also Br. 15-16.[1] Appellee derives the asserted

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[1]We do not understand appellee's argument to be that statutory classifications based on marital status are invalid *per se*. Where marital status is a criterion that bears a rational relationship to legislative purpose, Congress may constitutionally draw classifications on the basis of that criterion. Marital status is often the basis for different treatment of individuals, for example, in federal tax law. *E.g.*, 26 U.S.C. 6013 (providing for the filing of a joint return by a husband and wife), 2056 (providing a marital deduction for estate tax purposes). Moreover, this Court has recently upheld legislative classifications in the Social Security Act that have reference to the marital status of either the beneficiary or the wage-earner. *Weinberger* v. *Salfi*, 422 U.S. 749; *Mathews* v. *Lucas*, No. 75-88, decided June 29, 1976.

purpose of the statute not from legislative history, which she states "is of little value in determining the Congressional goal" (*id.* at 6), but "from the statutory scheme itself * * *" (*ibid.*).

But it is an inappropriate method of constitutional analysis to ascribe a purpose to a statutory scheme that a challenged provision manifestly is not designed to accomplish and then to argue that the provision is unconstitutional because it does not further that purpose. The statutory purpose asserted by appellee—to provide benefits to all wives and divorced wives (of disabled, retired, or deceased wage-earners) who care for their children—is inconsistent with the eligibility provision under consideration here, which expressly denies such benefits to divorced wives such as appellee. Thus the statutory scheme contradicts rather than supports the inference as to legislative purpose that appellee asks this Court to make.[2]

In cases such as this, where the legislative history is silent as to why benefits have not been extended to a category of individuals, the appropriate inquiry must be whether grounds that may reasonably be considered to have been within the contemplation of Congress support the legislative classification. We demonstrated in our opening brief (pp. 13-27) that there are grounds for the statutory scheme, reasonably inferrable from the Act and its legislative history, that support the extension of benefits to wives and certain divorced wives but

[2]Since the statute itself reveals that its purpose was not that of facilitating child care generally, there is no basis for appellee's suggestion (Br. 7) that such a purpose "seems to be confirmed" by the unrelated provision for mother's benefits in Section 202(g) of the Act. Indeed, if Congress had been principally concerned with the problems of child care presumably it would have made the benefits at issue here available under Section 202(g), but it chose not to do so. If anything, this suggests that in drafting the different provisions Congress had distinct purposes and different needs in mind.

do not support a similar extension to younger divorced wives, such as appellee, with entitled children in their care. In such circumstances, even if appellee's analysis were plausible (and we contend that it is not), this Court should, out of deference to Congress, choose the approach favorable to the validity of the statute.

2. Appellee, challenging the meaningfulness of the fact that only 14 per cent of divorced women are awarded alimony, asserts that that statistic "fail[s] to indicate the percentage of divorced women who receive and rely upon child support payments * * *, payments which are inevitably reduced upon the husband's retirement or disability" (Br. 11). But statistics respecting child support payments, which of course are made for the benefit of the child, are not germane here. Section 202(d) of the Act provides child's insurance benefits to the otherwise eligible child of a retired, disabled, or deceased divorced wage-earner. In the instant case, for example, the dependent child in appellee's care is entitled to and is receiving child's insurance benefits under the Act on the basis of her father's primary Social Security account (App. 44-47, 49-50). Since lost child support payments already are replaced under the Act, the percentage of divorced women who receive such payments need not be considered in evaluating the reasonableness of the provision for wife's insurance benefits challenged by appellee.

For the reasons stated here and in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.